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TRIAL

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

13 CR 345 (LGS)

5 ANTIONE CHAMBERS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 3, 2014
9:00 a.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 SANTOSH ARAVIND

NEGAR TEKEEI

18 Assistant United States Attorneys

19 JOSHUA L. DRATEL

WHITNEY SCHLIMBACH

20 Attorneys for Defendant

21 ALSO PRESENT: JOHN REYNOLDS, FBI

JENNIFER HANSMA, Paralegal AUSA

22 SONIA FARBER, Law Clerk

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1 (Trial resumed; jury not present)

2 THE COURT: I'm going to ask my law clerk to get the
3 charge and we'll do the charging conference first.
4 I sent you both a blackline and a clean copy of the jury
5 instructions. Let's go page by page. Shall we use the
6 blackline?

7 MR. DRATEL: I think, your Honor.

8 THE COURT: Of course, the blackline does have page
9 numbers. Anything on page one? Let me ask the government.

10 What page is your first comment on?

11 MR. ARAVIND: My first comment is -- there's not many.
12 I just noticed a typo on page 12 of the actual charge, I'm
13 trying to find out where that is.

14 THE COURT: That's all right. I have the actual one
15 as well. Where is the typo? It's under the heading "an
16 agreement."

17 MR. ARAVIND: Above that, second line at the top of
18 the page. It's "the commission of a robbery."

19 THE COURT: Okay. Ms. Farber, if you search
20 "commission a robbery" it will come up. It should be
21 "commission of a robbery."

22 Is that your first page of comments?

23 MR. ARAVIND: Yes, your Honor.

24 THE COURT: That is under the elements of the offense
25 for robbery conspiracy, so in the draft --

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1 MR. DRATEL: Page 23, 24.

2 THE COURT: Where is the next comment after that?

3 Yes, Mr. Dratel.

4 MR. DRATEL: We're preserving what we have already
5 done in terms of -- in other words, things that the Court has
6 eliminated or deleted, are they considered preserved so we
7 don't have to go through --

8 THE COURT: Yes.

9 MR. DRATEL: Thank you. I'm just talking about things
10 as they stand right now -- sorry.

11 THE COURT: In other words, we obtained from the
12 government a proposed charge. We got from you a track changes
13 showing your proposed changes. Some of those were rejected.
14 Those objections are preserved.

15 MR. DRATEL: Thank you. So I'm just working on the
16 charge as it is?

17 THE COURT: As it is now.

18 MR. DRATEL: Correct.

19 THE COURT: Correct.

20 MR. ARAVIND: Your Honor, the next change I have is on
21 the blackline. It would be page 35. And this is the same
22 issue that we raised before related to the kidnapping, your
23 Honor. Since I think the evidence showed that both Mr. Barea
24 and Ms. Torruella were kidnapped, we would make a reference
25 there to individual or individuals or just individuals

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1 described in Count Three.

2 THE COURT: Actually, I don't think we need to
3 reference -- why don't we go to the kidnapping charge, Count
4 Three kidnapping charges the defendant with engaging in
5 kidnapping. The following four elements: First --

6 MR. DRATEL: Which section are you in?

7 THE COURT: It's Count Three, kidnapping.

8 MR. DRATEL: Right.

9 THE COURT: It looks like -- it's impossible to tell
10 the page numbers on the blackline.

11 MR. DRATEL: Tell me what section.

12 THE COURT: Sure. It's E, it says E, Count Three
13 kidnapping.

14 MR. DRATEL: Okay.

15 THE COURT: We're going through the elements.

16 MR. DRATEL: Right.

17 THE COURT: What does the indictment -- actually I
18 have the indictment, as well, but what does Count Three say?
19 Did you intend that we give the jury a copy of the indictment?

20 MR. ARAVIND: We can certainly. I know we have done
21 that in other cases. We would have to do a redacted version.

22 THE COURT: Let's not, unless you can have it redacted
23 and done between now and then.

24 MR. ARAVIND: Of course, it depends on when the jury
25 gets it, but we'll obviously work to get that done.

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1 THE COURT: If it's ready, I will give it to them. If
2 it's not, then I won't, but they have a very detailed
3 description of the charges in the charge.

4 MR. ARAVIND: Right.

5 THE COURT: It seems to me that that is sufficient.
6 But in any event, Mr. Dratel.

7 MR. DRATEL: The indictment is not evidence and an
8 instruction to that without giving it to them --

9 THE COURT: The model jury instructions include a
10 reference to giving them the indictment. I didn't see an
11 objection to that.

12 You can object to that if you want.

13 MR. DRATEL: We object.

14 THE COURT: Okay.

15 MR. ARAVIND: Your Honor, the indictment does not
16 reference -- it just says Glisson and Chambers kidnapped an
17 individual, and that's in the "to wit" clause. I think the
18 evidence here is that two individuals were kidnapped.

19 THE COURT: I think we can make this easier.

20 MR. ARAVIND: Sure.

21 THE COURT: In the indictment, there's no individual
22 named.

23 MR. ARAVIND: There's no individual named.

24 THE COURT: So let's say, first, the government must
25 prove the defendant seized or confined or kidnapped or inducted

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1 or carried away an individual.

2 MR. ARAVIND: Sure. That makes sense, your Honor.

3 THE COURT: Second, the government must prove that the
4 defendant held an individual for ransom, reward or for reason.
5 We can say "the." Let's make it "an." Third, the government
6 must prove the individual was transported in interstate or
7 foreign commerce. Let's keep that the same. Second, I think
8 it should state "the" not "an."

9 Second, "the government must prove the defendant held
10 the individual," and that just references what's in the prior
11 sentence, which says "First, the government must prove the
12 defendant seized or confined or kidnapped or an individual."

13 So the only change in that section is in the sentence
14 that begins "first."

15 MR. ARAVIND: Yes. Of course, those changes should be
16 then made to the rest of the substantive charges for
17 kidnapping. I see the next change, it has to be in --

18 THE COURT: The first element.

19 MR. ARAVIND: Under first element, I would just say
20 carried away "a" victim instead of "the" victim.

21 THE COURT: Yes.

22 MR. ARAVIND: The next one, under two, I think should
23 be under two, the second element the government must prove
24 beyond a reasonable doubt is the defendant held an individual
25 for ransom or for some other reason. And then the next

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1 sentence it should read --

2 THE COURT: I would leave it as "the" in the next
3 sentence so they know it's a reference to the preceding
4 sentence.

5 MR. ARAVIND: That's fine. And then we can keep the
6 "the" for the next line, the last line on that page.

7 THE COURT: Then in the last paragraph, "if you find
8 that the defendant did not hold an individual," what about "for
9 the reasons charged"?

10 MR. ARAVIND: I think it could read "for the purpose
11 of carrying out a robbery of narcotics proceeds." I think
12 that's what the indictment says.

13 So if we want to substitute that language, it's
14 probably more specific, especially if the jury doesn't end up
15 getting a copy of the indictment.

16 THE COURT: If you find that the defendant did not
17 hold an individual and then delete described in three and then
18 say four, what language did you want to insert?

19 MR. ARAVIND: For the purpose of carrying out a
20 robbery of narcotics proceeds.

21 MR. DRATEL: Robbery of --

22 THE COURT: Narcotics proceeds.

23 MR. DRATEL: Which would be what's really referenced
24 in Count Two as opposed to generic.

25 THE COURT: If we're not giving them the indictment.

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1 MR. DRATEL: Okay.

2 THE COURT: If you find that the defendant did not
3 hold an individual for the purpose of carrying out the robbery
4 of narcotics proceeds or if you have reasonable doubt as to
5 this element, then it is your duty to acquit on this count.

6 MR. ARAVIND: Then I think in the next -- under number
7 three, the third element, I would suggest changing the first
8 sentence to read the third element the government must prove
9 beyond a reasonable doubt is that -- I think probably maybe a
10 victim was transported in interstate commerce or a victim of
11 the kidnapping was transported in interstate commerce.

12 THE COURT: Any objection?

13 MR. DRATEL: No, your Honor.

14 MR. ARAVIND: Then in paragraph four, your Honor, the
15 third paragraph, again, we would take out the reference to the
16 individual described in Count Three and just say the defendant
17 knew that a victim of the kidnapping was not with him
18 voluntarily, but, rather, was forced or made to go with him.

19 THE COURT: Ms. Farber, I'll assume you'll tell me if
20 it's not okay.

21 MS. FARBER: Yes, Judge.

22 THE COURT: Thank you.

23 Other comments?

24 MR. ARAVIND: Our next comment, your Honor, is in
25 Count Four.

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1 THE COURT: Yes.

2 MR. ARAVIND: The last line, it just says "or is
3 guilty of the kidnapping conspiracy." Count Three does not
4 charge a kidnapping conspiracy. It charges a substantive
5 kidnapping. So I would just take out the in the conspiracy or
6 just the conspiracy, yes.

7 THE COURT: We had a paragraph that starts "Count Four
8 is a firearms count connected," is that right?

9 MR. ARAVIND: Yes. It should read connected to the
10 robbery conspiracy charged in Count One and the kidnapping
11 charged in Count Three. That means you cannot consider Count
12 Four unless you first determine that the defendant is guilty of
13 either the robbery conspiracy charged in Count One or is guilty
14 of the kidnapping charged in Count Three.

15 THE COURT: So we're just deleting the word
16 "conspiracy" there.

17 MR. ARAVIND: Correct.

18 THE COURT: All right. Other comments?

19 MR. ARAVIND: Your Honor, this may just be me trying
20 to take out extraneous language, but I don't know whether you
21 need to instruct them that a hammer is not a firearm.

22 THE COURT: That a hammer is not a firearm.

23 MR. ARAVIND: On 2A1.

24 THE COURT: There's language there that says, but a
25 hammer is not a firearm.

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1 Do you have any objection to taking that out?

2 MR. DRATEL: No.

3 THE COURT: Ready for any other comments.

4 MR. ARAVIND: I don't think the government has any
5 other comments.

6 THE COURT: Mr. Dratel, anything else?

7 MR. DRATEL: Your Honor, my first comment is in the
8 identification instruction on the eyewitness identification
9 instruction, page 29.

10 THE COURT: Are you in the clean copy?

11 MR. DRATEL: No. I'm working off of the redline, the
12 blackline.

13 THE COURT: It says page nine.

14 MR. DRATEL: Twenty-nine. I'll look for it. I think
15 it's about 40 or 41 -- page 40 in the --

16 THE COURT: In the clean copy.

17 MR. DRATEL: Yes. I think paragraph three, you have
18 heard the arguments. I think "you will hear."

19 THE COURT: Yes.

20 MR. DRATEL: Obviously, depending on the Court's
21 ruling on some of the other issues, I think there should be
22 additional information there of the type that's in the *Jones*
23 opinion and about cross-racial identification, which
24 complements the other types of factors this Court talked about
25 back before.

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1 THE COURT: I asked the parties to give me a joint
2 proposal of a possible charge on that and I haven't received
3 anything. So, I'm not adverse to doing that, but I need
4 something specific.

5 MR. DRATEL: I'll have something.

6 THE COURT: Anything else?

7 MR. ARAVIND: Of course, we would have to look at that
8 proposed instruction.

9 THE COURT: Of course.

10 MR. ARAVIND: By my account, I think there's been one
11 or two references to any sort of cross-racial identification,
12 so we just want to look at what Mr. Dratel has.

13 THE COURT: Yes.

14 MR. DRATEL: My next comment is the blackline at 34
15 and the clean copy at 43 Section D, that first paragraph.

16 THE COURT: Okay.

17 MR. DRATEL: I think that the order should be
18 reversed. I think that "if you find that the government has
19 failed to meet its burden" should be before "you find that the
20 government has met its burden."

21 THE COURT: Any objection?

22 MR. ARAVIND: We do object. It's our burden. I think
23 that's our burden and that's why the sentence that talks about
24 us meeting the burden should be first.

25 THE COURT: I agree with the government. I'll leave

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1 it the way it is.

2 MR. DRATEL: Then at the bottom of that -- at the very
3 end of that -- well, actually the paragraph that goes over to
4 page 44, "then your good conscience appears to be in accordance
5 with the truth," I'm not sure that that's the actual standard.
6 I don't think that's the standard. I think really it's about
7 the Court's instructions about what the law is, applying the
8 facts to the law. They're supposed to --

9 THE COURT: I'm looking for the reference to
10 conscience. I can't find it.

11 MR. DRATEL: If you look at page 44 of the clean copy,
12 the paragraph that begins the page, the very last.

13 THE COURT: The runover paragraph.

14 MR. DRATEL: Yes, about the first full paragraph, the
15 paragraph that carries over to 43, the last two lines.

16 THE COURT: Prejudice or favor of either party, and
17 adopts the conclusion that in your good conscience appears to
18 be in accordance with the truth.

19 MR. DRATEL: I think that undermines the burden of
20 reasonable doubt as opposed to what's the truth, as opposed to
21 holding the government to its burden.

22 MR. ARAVIND: There's a reference to the burden. We
23 just spoke about the reference, which was in the first
24 paragraph of that section.

25 I think one of the first things your Honor said to

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1 this jury was that this is a trial and it's a search for the
2 truth, and I think that's true. So we believe that the Court's
3 instructions is appropriate.

4 THE COURT: I agree with the government, so I'll keep
5 it the way it is.

6 MR. DRATEL: And in the conclusion --

7 THE COURT: The closing comment.

8 MR. DRATEL: I'm just looking to see if it's
9 actually -- the oath part, second line, "solely upon the
10 evidence," I would just add "or lack of evidence."

11 THE COURT: I think that's argument. I'm going to
12 leave it the way it is.

13 MR. DRATEL: Thank you, your Honor.

14 THE COURT: With respect to the charge, Ms. Farber, if
15 you email it to me, I can begin to charge them off of my iPad
16 and then we can have copies made for the jury as I'm charging
17 them. And as soon as they get here, we'll just catch them up
18 to where it is.

19 Let's take a very brief recess so I can get some
20 material out of the robing room.

21 I did have one question. There was a reference in one
22 of the letters to counsel bringing a copy of the thumbnail
23 picture today.

24 MR. DRATEL: Yes.

25 THE COURT: I was wondering where that is. I gathered

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1 it was in the 3500 material.

2 MR. DRATEL: Correct, but it was not identified in any
3 way.

4 THE COURT: Ms. Farber, would you mind taking that
5 from Mr. Dratel. I have 3500 material, and is it this picture?

6 MR. DRATEL: Yes, your Honor.

7 THE COURT: It's the reverse side of the single
8 photograph that was used in the photo array that's Defense
9 Exhibit B, is that right?

10 MR. DRATEL: Okay.

11 THE COURT: Yes.

12 MR. DRATEL: Yes, that's right.

13 MS. TEKEEI: Yes.

14 MR. DRATEL: Oh, I see. Yes.

15 MS. FARBER: On page 40, a point of clarification. We
16 struck "you have heard the argument by counsel on the subject",
17 so to say "you will hear the arguments of counsel on the
18 subject," it no longer makes sense to say "and I will not
19 repeat them all here."

20 MR. DRATEL: Right.

21 THE COURT: I have your copy of this, I'll give it
22 back. I understand now what it is.

23 What is the government's understanding of when that
24 was shown to Ms. Torres?

25 MS. TEKEEI: We don't know that it was. When looking

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1 at this in the 3500, we actually didn't think that this was
2 Mr. Chambers.

3 THE COURT: Let me ask this question. I'll ask a
4 different question.

5 MS. TEKEEI: Sure.

6 THE COURT: When the witness talked about a single
7 photo that was shown on the computer enlarged, which occasion
8 did you think that was? Which photo and when in the sequence?

9 MS. TEKEEI: Honestly, we were completely confused by
10 it and were not sure and still remain unsure. And we have
11 spent a bulk of last night looking through the materials to see
12 what it could possibly have been. We really don't know. It
13 was the very first time that we heard anything like that. We
14 looked through the 3500 materials just to verify that in case
15 for some reason something had slipped. Of course, we would
16 have notified Mr. Dratel and the Court had we known.

17 At this moment, we remain confused by that testimony.
18 We're not sure.

19 THE COURT: I understand. I accept your
20 representation.

21 Let me ask Mr. Dratel what he thinks when in the
22 sequence the single photograph was displayed to the witness, or
23 do you agree that it's somewhat unclear that it was certainly
24 before the Internet photo?

25 MR. DRATEL: If there's any lack of clarity is because

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1 Detective Deloren never memorialized that, he never told the
2 government.

3 THE COURT: I understand that. I had a simple
4 question what your theory was. I think the evidence is
5 ambiguous on that question, but I was just curious what your
6 theory, is if you have one. Your theory may be it's ambiguous.

7 MR. DRATEL: I think that the first photo she saw was
8 a single photo of him and maybe that thumbnail, that he
9 describes as a thumbnail in his 3500 from two days ago, not
10 never before, that that's the younger photo that she talks
11 about. And then the array --

12 THE COURT: I'm going to interrupt you because I think
13 all this is sort of academic in a sense because we're now
14 trying to interpret the testimony. The testimony is what it
15 is. So excuse me just a moment, I'll be back.

16 (Recess)

17 THE COURT: You may be seated.

18 MR. DRATEL: One other thing has come to my attention
19 just now.

20 THE COURT: Speak into the mic.

21 MR. DRATEL: Sorry. Respectfully, that photo that I
22 just gave to the Court this morning was on Agent Reynold's
23 phone at the time he arrested Mr. Chambers and showed it to
24 Mr. Chambers on the car ride on the way back from New Jersey.

25 THE COURT: I'm sorry to be obtuse, but the

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1 significance of that is?

2 MR. DRATEL: Detective Deloren said he had no idea
3 where the photo came from.

4 THE COURT: I see. I hadn't realized that Detective
5 Deloren had said that.

6 MR. DRATEL: But also that's a photo that's out there,
7 being used.

8 THE COURT: All right. So, I'm prepared to rule on
9 the motion to strike Ms. Torres' testimony.

10 Let me read the ruling.

11 This is the fourth time I've been asked to rule on
12 whether or not the identification procedures used to identify
13 Mr. Chambers were unduly suggestive. Unlike the first three
14 times, and based on Ms. Torres' testimony, I'm granting
15 Mr. Chambers' motion to strike. I intend to ask the jury to
16 disregard all of Ms. Torres' testimony identifying
17 Mr. Chambers, including her in-court identification.

18 Let me briefly review the history of this motion.
19 Initially, Mr. Chambers made a motion to suppress the
20 identification testimony on the ground that the victims were
21 shown two photo arrays, both containing a photo of
22 Mr. Chambers, the second of which resulted in a positive
23 identification. I held that while the procedure was
24 suggestive, it did not rise to a constitutional violation and
25 denied the motion. Second, several months later, the

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1 government wrote to advise that they had just learned that one
2 of the victims, whom we now know to be Ms. Torres, was also
3 shown a single candid photo of the defendant from the Patriot
4 News website Mr. Chambers' full name under the picture, that
5 she had been unable to identify Mr. Chambers as the perpetrator
6 from this candid photo, and was only able to identify him from
7 a second photo array. I again denied the motion on the same
8 grounds.

9 Third, on the Monday the beginning of trial, I deny
10 Mr. Chambers' motion for a Wade hearing based on another
11 revelation, this time in the 3500 materials, that Ms. Torres
12 had Googled Mr. Chambers after Detective Deloren showed her the
13 online picture and, quote, "saw same photo in article - nothing
14 different than when saw it" at the precinct. The basis for my
15 ruling as I explained on Tuesday, was that quote "[s]ince the
16 witness was looking again at the same photo on the same day,
17 that additional viewing did not...materially change the
18 analysis of my prior ruling." Over the course of Detective
19 Deloren and Ms. Torres' testimony, it's become clear to me that
20 the facts are yet again different from what had been
21 represented to the Court, and apparently to the prosecutors as
22 well.

23 With regard to Ms. Torres' testimony, which I found to
24 be credible, my understanding of the timeline for the
25 identification of Mr. Chambers is as follows, but the precise

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1 sequence admittedly is not entirely clear. Ms. Torres met with
2 Detective Deloren on four different occasions to identify the
3 person she saw in her grandmother's living room on the night of
4 the robbery. She first met with Detective Deloren "a day or
5 two after the night" (135,11). Detective Deloren showed her
6 mug shot photos on the computer at the precinct (142,22). No
7 identifications resulted from this first visit.

8 The second time Ms. Torres met with Detective Deloren,
9 a few months later, he showed her a single photo of
10 Mr. Chambers on his computer screen at the precinct.
11 Ms. Torres told Detective Deloren that the person in the
12 picture looked a little younger and could be the person from
13 the night of the robbery. Ms. Torres testified that this
14 picture was not the same as any of the other pictures entered
15 as exhibits by either side in the trial. She said about her
16 identification, her viewing of the photo at the time in the
17 precinct, quote, "I didn't pick one and he clicked it. It was
18 already opened that one." [166:5-6]

19 Ms. Torres also testified that she failed to identify
20 Mr. Chambers from the same array that her mother Ms. Torruella
21 had failed to identify him from. Based on my review of the
22 testimony, however, it remains unclear whether this happened
23 before or after she was shown the single photo on the screen.

24 The third time Detective Deloren called Ms. Torres
25 into the precinct to show her what he called, quote, "an

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1 updated picture" of the same person. He showed her the picture
2 from the Patriot News website, which included the name "Antione
3 Chambers" under the photo. In the picture, Mr. Chambers is
4 shown wearing a hat. Ms. Torres, who testified that the
5 perpetrator had been wearing a hat at the time of her initial
6 viewing, stated that the single photo convinced her that
7 Mr. Chambers was person she saw the night of the robbery.

8 When Ms. Torres returned home, she went online and
9 found the same news article on her computer. She then saw not
10 just one picture of Mr. Chambers, the one that Detective
11 Deloren had shown her, but three additional pictures of him
12 associated with the same news story. In each picture,
13 Mr. Chambers is shown wearing a hat.

14 Finally, Detective Deloren met with Ms. Torres a
15 fourth time, which is when she identified Mr. Chambers from the
16 array that is now Government Exhibit 1001. Based on this
17 sequence of events, Ms. Torres identified Mr. Chambers in
18 court.

19 With regard to Detective Deloren to the extent that
20 his account differs, I do not find it credible. This is for
21 several reasons. First, the facts of the identification
22 procedure had been constantly evolving, resulting in now four
23 separate motions to quash the identification testimony.
24 Second, Detective Deloren failed to make any kind of record of
25 the two most suggestive occasions when he showed Ms. Torres

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1 photos of Mr. Chambers - when he showed her the single photo I
2 did not learn about until the testimony; and when he showed her
3 the Internet candid photo. Third, when on cross, it was
4 suggested that Detective Deloren had intended to conceal that
5 he had shown Ms. Torres the Internet photo, he insisted the
6 that he had told the prosecutors and FBI about showing
7 Ms. Torres the Internet photo Mr. Chambers around the time she
8 viewed it, and in any event, much closer to May 2013 than
9 January 2013. This statement is directly contrary to the
10 government's written representation to the Court in
11 February 2014 that they had just learned about the online
12 newspaper photo. The government, as it is ethically required
13 to do, corrected Detective Deloren's testimony by stipulation
14 now in evidence, stating that they did not know about the
15 Internet photo until January 24, 2014. It appears that they
16 first learned about the Internet photo, not from Detective
17 Deloren, but rather from when they interviewed Ms. Torres.

18 With regard to the facts underlying my ruling, there
19 are significant differences between the factual account which
20 were the basis for my prior rulings and the current evidence.

21 First, Ms. Torres met with Detective Deloren on four
22 or five occasion and not three. Second, she was shown another
23 single photo of Mr. Chambers that we learned about during her
24 testimony. Third, she was not shown the photo from the news
25 article on the same day that she was shown the initial array.

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1 Fourth, she first identified Mr. Chambers from the single
2 photograph from the online article, rather than from the final
3 array. And fifth, she saw three additional pictures of
4 Mr. Chambers online before the final array and the, quote,
5 "official" positive identification.

6 The government argues that I should hold a *Wade*
7 hearing to assess whether the identification techniques were
8 unduly suggestive. I reject this suggestion. Quote, "The
9 purpose of a *Wade* hearing is to determine *before* trial whether
10 pretrial identification procedures had been so improperly
11 suggestive as to taint an in-court identification." *Lynn v.*
12 *Bliden*, 443 F.3d 238, 248, (2d Cir. 2006), *as amended* (May 19,
13 2006). There is no need for a *Wade* hearing as I have already
14 heard testimony and seen evidence about the identification
15 procedures at trial and considered the "totality of
16 circumstances." I have determined that Detective Deloren has
17 not given a credible account and that Ms. Torres has. All
18 parties were on notice that the identity of the defendant is
19 the single material issue at this trial, and the government had
20 and took the opportunity to put on its evidence on that issue.
21 Moreover, the government opposed a *Wade* hearing earlier this
22 week when defense counsel requested it. Finally, the
23 government has not pointed to any case, and I have not found
24 any, where a *Wade* hearing is held about the evidence *after* it
25 has been presented at trial, indeed after the government has

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1 rested.

2 So with regard to my ruling about striking the
3 testimony, as I have explained, due process requires that in
4 order to protect a defendant's fundamental right to a fair
5 trial, identification procedures employed by law enforcement
6 must not be "so impermissibly suggestive as to give rise to a
7 very substantial likelihood of irreparable misidentification."
8 *Simmons v. United States*, 390 U.S. 377, 384 (1968).

9 (Continued on next page)

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1 THE COURT: Further, single-photo identifications are
2 generally disfavored as unduly suggestive. See United States
3 v. Concepcion, 983 F.2d 369, 377 (2d Cir. 1992).

4 In determining whether the procedures in this case
5 were impermissibly suggested, I first have to decide whether or
6 not the identification was so unnecessarily suggestive and
7 conducive to mistaken identification that Mr. Chambers was
8 denied due process. Stoval v. Denno, 388 U.S. 293, 302 (1967).
9 I am required to "examine the procedures employed in light of
10 the particular facts of the case and the totality of the
11 surrounding circumstances." United States v. Thai, 29 F.3d
12 785, 808 (2d Cir. 1994).

13 Having reviewed the identification process in light of
14 the particular facts and the totality of the circumstances, I
15 find that the photo identifications and surrounding
16 circumstances were unduly suggestive and conducive to
17 misidentification. Ms. Torres was shown single photos of
18 Mr. Chambers on two separate occasions, and in each case the
19 detective made clear that the subject of the photograph was his
20 target. There seems to be little other reason to show a
21 "updated" photograph rather than an array. My initial rulings
22 were predicated on the belief that we were dealing with two
23 arrays and an intervening single photograph. Now I find that
24 we are actually dealing with only one final array preceded by
25 at least five individual photographs and the detective's, at

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1 the very least, implicit encouragement. Further, the only
2 photographs in which she viewed anyone wearing a hat were the
3 ones of the defendant that came from the online article that
4 Detective Deloren had shown her. Ms. Torres testified that the
5 perpetrator had worn a hat and that when she viewed any photo,
6 she covered the hairline with her hand. I also conclude that
7 the various photos of Mr. Chambers from the online article more
8 closely resemble his picture in the final array than the single
9 photo in the multiple arrays. In the words of Judge Vincent
10 Broderick of this district, "this evidence leads me to find
11 that the procedures, to put it most charitably, were
12 'impermissibly suggestive.'" Jackson v. Fogg, 465 F.Supp. 177,
13 185 (S.D.N.Y. 1978) aff'd 589 F.2d 108 (2d Cir. 1978).

14 Even "if the pretrial procedures have been unduly
15 suggestive, an in-court identification may still be permitted
16 if the Court determines that the identification is
17 independently reliable. The factors to be considered in
18 assessing reliability include the opportunity of the witness to
19 view the criminal at the time of the crime, the witness' degree
20 of attention, the accuracy of the witness' prior description of
21 the criminal, the level of certainty demonstrated by the
22 witness at the confrontation, and the length of time between
23 the crime and the confrontation. Thai, 29 F.3d at 808.
24 Further, "the factors must be evaluated in light of the
25 totality of the circumstances, recognizing that the linchpin of

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1 admissibility is reliability," id. and a "good or poor rating
2 with respect to any of these factors will generally not be
3 dispositive, Raheem v. Kelly, 257 F.3d 122, 135 (2d Cir. 2001).

4 Evaluating the facts in light of the totality of the
5 circumstances, I do not find that Ms. Torres' identifications
6 were independently reliable. She testified that at the time of
7 her initial viewing the perpetrator was standing in the living
8 room, while she stood in the hallway at the door. The only
9 light came from the stove light of the kitchen, which was on
10 low, and the hallway light. No lights were on in the living
11 room. She stated that the distance between her and the
12 perpetrator was about the length of the entire jury box. She
13 also testified that the perpetrator kept looking away.
14 Finally, her viewing lasted no more than a few minutes. Even
15 if I were to credit Ms. Torres' degree of attention, I cannot
16 conclude that such attention aided her identification, given
17 the circumstances of the viewing.

18 It is true that "a suggestive procedure does not in
19 itself intrude upon a constitutionally protected interest if it
20 did not contribute significantly to the identification of the
21 defendant." Raheem, 275 F.3d at 135. In this case, however, I
22 find that the suggestive procedures did significantly
23 contribute to the identification of the defendant. I am
24 therefore unable to conclude that any indicia of independent
25 reliability in Ms. Torres' identification are sufficient to

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1 outweigh the "corrupting effect of the suggestiveness."

2 "A witness who makes an out-of-court identification in
3 unduly suggestive circumstances may perform an in-court
4 identification only if the government demonstrates by clear and
5 convincing evidence that the in-court identification rests on
6 an independent source." United States v. Ghayth, 990 F.Supp.2d
7 427, 432 (S.D.N.Y. 2014). In making the determination as to
8 whether the in-court identification "rested on an independent
9 recollection of the victim's initial encounter with the
10 assailant, uninfluenced by the pretrial identifications, courts
11 consider the following factors: 1, the victim's prior
12 opportunity to observe the alleged criminal act; (2) any
13 discrepancy between any pre-lineup description and the
14 defendant's actual description; (3) any identification prior to
15 the procedure of another person; (4) a photographic
16 identification of the defendant prior to the illegal procedure;
17 (5) the victim's failure to identify the defendant on a prior
18 occasion; and (6) the lapse of time between the alleged act and
19 the tainted identification. Young v. Conway, 698 F.3d 69, 78
20 (2d Cir. 2012).

21 Here, based on the evidence presented at trial, the
22 government has failed to meet its burden. As I have discussed,
23 Ms. Torres' prior opportunity to observe the perpetrator was
24 brief and in bad light. In addition to the factors I have
25 already discussed, Ms. Torres initially thought that the

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1 perpetrator looked like her friend's boyfriend. Further, she
2 described a mark on the perpetrator's face, one Mr. Chambers
3 does not have. In addition, Ms. Torres failed to identify at
4 least one photo of Mr. Chambers and explain that he looked
5 younger. Ms. Torres has never identified Mr. Chambers without
6 the taint of impermissible suggestiveness. Consequently, her
7 in-court identification cannot stand.

8 In sum, I grant Mr. Chambers' motion to strike. The
9 Second Circuit "generally presumes the juries limiting
10 instructions." United States v. Gomez, 617 F.3d 88, 96 (2d
11 Cir. 2010). The presumption is dropped where there is an
12 overwhelming probability that the jury will be unable to follow
13 the Court's instruction and the evidence is devastating to the
14 defense. I do not find that the eyewitness evidence that
15 Ms. Torres offered was so devastating that the jury will be
16 unable to follow a curative instruction. Therefore, I find
17 that a curative instruction to the jury to disregard
18 Ms. Torres' identification evidence is an appropriate remedy,
19 and that a mistrial is not warranted.

20 After striking Ms. Torres' eyewitness testimony and
21 given that I based my decision to allow expert testimony on the
22 matter based on the procedures used in Ms. Torres' case, any
23 expert testimony on eyewitness identification should not be
24 admitted.

25 That's my ruling. I intend to give a simple

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1 instruction to strike. I will also ask that the government
2 exhibit, which is the final photo array, be struck from the
3 evidence. And my question to the defense is whether or not you
4 would like to withdraw Exhibits B and C.

5 MR. DRATEL: And I think A as well. Because I think
6 that's the article itself.

7 THE COURT: A.

8 MR. DRATEL: A is the article, B is the array, C is
9 the other photographs from the Internet article.

10 THE COURT: And the government exhibit is 1000 or
11 1001?

12 MS. TEKEEI: 1001, your Honor.

13 THE COURT: We will need to get those out of the
14 jury's notebooks, Mr. Street.

15 Yes, Mr. Dratel.

16 MR. DRATEL: Given the Court's ruling, defense would
17 rest and renew our Rule 29 motions.

18 THE COURT: The motion is denied for the same reasons
19 that I discussed yesterday, as I did not take into account, as
20 I said, the identifications in making my ruling.

21 I think you may want to rest when the jury comes out.

22 MR. ARAVIND: Before we do that, your Honor, just two
23 issues related to the stipulations.

24 The first is we do have now a typed-up version of the
25 Internet photo stip related to the testimony, the showing of

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1 the photograph, Internet photograph of Mr. Chambers by
2 Detective Deloren to Ms. Torres which we will hand up once it's
3 signed by Mr. Dratel.

4 And then we noticed yesterday that one of the parties'
5 stipulations that related to the cell site evidence had a typo
6 in paragraph 7 and so we would ask that this amended
7 stipulation be substituted in for that stipulation, and Mr.
8 Dratel has signed it.

9 THE COURT: How do the logistics of the notebook work
10 with these changes? I don't have any problem with our doing
11 it.

12 MR. ARAVIND: We will scan it in and send it to them
13 or bring it to court as soon --

14 THE COURT: Okay.

15 Mr. Dratel.

16 MR. DRATEL: Just before the jury comes out,
17 Dr. Strange is in the hall. I would like to let her go. I
18 think Detective Deloren is out there, too.

19 One question with respect -- I don't know the
20 government's position because I just realized it. The expert
21 testimony instruction. I don't think the government ever
22 qualified Agent Perry as an expert. I don't know that there is
23 any expert testimony in the case. I am not going to challenge
24 his testimony in terms of competence because just as a person
25 of knowledge and training, he was able to testify.

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1 THE COURT: I think his testimony was in the nature of
2 expert testimony. And the instruction, as I recall it,
3 basically says, you know, don't give extra --

4 MR. DRATEL: I think your Honor is right.

5 MR. ARAVIND: Your Honor, can we just have one moment
6 to just cover with our chief?

7 THE COURT: Sure.

8 MR. ARAVIND: Your Honor, just for the record, we are
9 obviously abiding by the Court's ruling. We just wanted to
10 note that it's the government's view that the Court does have
11 discretion to reopen a hearing on the issue about the pretrial
12 identification procedures and to permit Detective Deloren to
13 testify to achieve the totality of the circumstances that I
14 think the Second Circuit says this Court should be looking at
15 in evaluating this issue. But we obviously are abiding by the
16 ruling and we will tailor our arguments in summation
17 accordingly.

18 THE COURT: Thank you.

19 And just as a note, I did not mention in my ruling Mr.
20 Dratel's argument about Detective Deloren selecting the photos
21 for the photo array. It seemed to me that that was not really
22 one of the big issues in my own mind, and so I didn't think
23 that having additional testimony on that would necessarily be
24 helpful or instructive.

25 MR. ARAVIND: We do have a very quick question for

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1 your Honor.

2 THE COURT: Yes.

3 MR. ARAVIND: This ruling, we understand it is about
4 Ms. Torres' eyewitness identification. There hasn't been any
5 statement with respect to Ms. Torruella's. And I believe the
6 photo array that was shown to her that was admitted into
7 evidence remains in evidence, and we can make reference to it
8 in summation, as I expect Mr. Dratel would make references to
9 the identification and lack of identification in his
10 submission.

11 THE COURT: Mr. Dratel.

12 MR. DRATEL: Yes, your Honor.

13 Also, I'll withdraw my request to amend the
14 identification instruction.

15 THE COURT: I think where we are is that I will give
16 the instruction to strike and I will then give the charge.
17 Then we will have closing arguments. My guess is closing
18 arguments will be after lunch. The charge is long.

19 MR. DRATEL: Even if the Court's charge ends, my guess
20 is at this point probably end somewhere around noon, if we
21 break early and come back and do the summations.

22 THE COURT: I would do that. I will not begin
23 summations and have a little bit of one and then break or even
24 have one and then break. I'll do them in a piece.

25 MR. ARAVIND: Your Honor, because my review of the

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1 transcript yesterday -- this is about the phone stipulation.
2 So the issue was the reference to the Sprint records. The
3 stipulation that was read into the record indicated that I
4 believe all voice communications are recorded in the central
5 time zone. The actual stipulation should read that Sprint
6 reports times of voice calls in the local time zone in which
7 the voice is placed and records text messages in the central
8 time zone. That's consistent with what Special Agent Reynolds
9 and Special Agent Perry testified to. We would ask that the
10 Court just read that paragraph to correct the record, which is
11 paragraph 7 of Government Exhibit 2001.

12 THE COURT: If you put a sticky next to it to avoid
13 any possible error on my part, I appreciate that.

14 MR. ARAVIND: Your Honor, if we could just get a
15 preview of what instruction you are going to give.

16 THE COURT: I am trying to get it to give you.

17 MR. ARAVIND: Thank you, Judge.

18 THE COURT: Let me read to you what I intend to say.
19 If you have any comments, I welcome them.

20 Ladies and gentlemen of the jury, as I informed you at
21 the beginning of the trial, you must disregard any evidence
22 that I strike from the record. I will now instruct you that
23 I'm striking the testimony of Ms. Torres that relates to her
24 identification of the defendant, including her in-court
25 identification that you witnessed.

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1 I'm also striking exhibits relating to that
2 identification which are Government Exhibits 1001 and
3 Defendant's Exhibits A, B, and C.

4 It is your duty to disregard the evidence I have just
5 spoken about in your deliberations. That means you are not to
6 discuss the evidence and you are to deliberate as though the
7 testimony of Ms. Torres relating to the identification of the
8 defendant did not occur. It should not play any role in your
9 verdict.

10 MR. ARAVIND: That's fine with the government.

11 MR. DRATEL: That's fine.

12 THE COURT: Mr. Street, as soon as you are done doing
13 that, if you can bring the jury in.

14 Mr. Dratel, the first thing I'll do when they come out
15 is look at you and you can say the defense rests.

16 MR. DRATEL: Yes.

17 THE COURT: Let me strike the testimony and then you
18 can rest.

19 MR. DRATEL: Thank you.

20 THE COURT: Counsel, we have copies of the jury
21 instructions for you, but they are printing. The jury does
22 have theirs. As soon as they are done, I will give them to
23 you.

24 MS. TEKEEI: Thank you.

25 MR. DRATEL: Thank you.

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1 THE COURT: Mr. Street, I think we are ready.

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen. My
4 sincere apologies for the delay. But I promise you that that
5 will not happen again. I'm confident.

6 Here is what I would like to do. The first thing is
7 that there is an amended stipulation that's Government Exhibit
8 2001. It's the stipulation that dealt with the phone records.
9 And one paragraph is amended. And so I will just read that
10 amended paragraph and I'll read it in its entirety. It's
11 paragraph 7 and it has to do with toll record custodians.

12 It says: If called to testify, a custodian of records
13 from Sprint would testify as follows: A. He or she is
14 familiar with the recording keeping practices of Sprint; B.
15 In the toll records Sprint records times of voice calls in the
16 local time zone in which the voice call is placed; and C.
17 Sprint records text messages in the central time zone.

18 I will give this to Mr. Street.

19 I also have an instruction for you.

20 Ladies and gentlemen, as I informed you at the
21 beginning of trial, you must disregard any evidence that I
22 strike from the record. I will now instruct you that I am
23 striking the testimony of Ms. Torres. That's Ms. Torruella's
24 daughter who you heard testify a couple of days ago that
25 relates to her identification of the defendant, including her

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1 in-court identification that you witnessed.

2 I'm also striking exhibits relating to that
3 identification, which are Government Exhibit 1001 and
4 Defendant's Exhibits A, B, and C. It is your duty to disregard
5 the evidence that I have just spoken about in your
6 deliberations. This means that you are not to discuss the
7 evidence and you are to deliberate as though the testimony of
8 Ms. Torres relating to identification of the defendant did not
9 occur. It should not play any role in your verdict.

10 Now I think we were headed to the defense case. As I
11 told you, the defense is not required to present a case. The
12 defendant is presumed innocent. The burden of proof is on the
13 government to prove its case.

14 Having said that, Mr. Dratel, would you like to put on
15 any witnesses or evidence?

16 MR. DRATEL: No. Thank you, your Honor. The defense
17 rests.

18 THE COURT: Ladies and gentlemen, at this time I'm now
19 going to give you the final substantive instructions for what
20 you need to do when you deliberate. After I give you the
21 instructions you'll hear final arguments from the lawyers. And
22 after that I'll have a few closing remarks and then you'll go
23 off to the jury room to deliberate.

24 You have copies of the jury instructions in front of
25 you. You will be allowed to take them into the jury room with

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1 you. If you wish to follow along while I read, you may. If
2 you prefer just to listen, you may do that as well.

3 Members of the jury, you've now heard all of the
4 evidence in the case, as well as the final arguments of the
5 parties. We have reached the point where you are about to
6 undertake your final function as jurors. You have paid careful
7 attention to the evidence and I am confident that you will act
8 together, with fairness and impartiality, to reach a just
9 verdict in this case.

10 My duty at this point is to instruct you as to the
11 law. It is your duty to accept these instructions of law and
12 apply them to the facts as you determine them, just as it has
13 been my duty to preside over the trial and decide what
14 testimony and evidence was proper under the law for your
15 consideration.

16 On these legal matters, you must take the law as I
17 give it to you. If any attorney or witness has stated a
18 different principle different from what I state to you in my
19 instructions, it is my instructions you must follow.

20 You are to consider these instructions together as a
21 whole, in other words, you are not to isolate or give undue
22 weight to any particular instruction.

23 So the heading I'm at is role of the jury, in case you
24 are trying to follow along.

25 As members of the jury you are the sole and exclusive

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1 judges of the facts. You pass upon the evidence, you determine
2 the credibility of witnesses, you resolve the conflicts as
3 there may be in the testimony, you draw whatever reasonable
4 inferences you decide to draw from the facts as you have
5 determined them, and you determine the weight of the evidence
6 or lack of evidence.

7 It is your sworn duty and you have taken the oath as
8 jurors to determine the facts and to follow the law as I give
9 it to you. You must not substitute your own notions or
10 opinions of what the law is or ought to be.

11 I remind you that in reaching your verdict you are to
12 perform your duty of finding the facts without bias or
13 prejudice as to any party. You must remember that all parties
14 stand as equals before a jury in the courts of the United
15 States. You must also remember that it would be improper for
16 you to allow any feelings you might have about the nature of
17 the crimes charged to interfere with your decision making
18 process.

19 The fact that the prosecution is brought in the name
20 of the United States does not entitle the government or its
21 witnesses to any greater consideration than that accorded to
22 any other party. By the same token, the government is entitled
23 to no less consideration. The government and the defendant
24 stand as equals at the bar of justice. Your verdict must be
25 based solely on the evidence or the lack of evidence.

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1 Now I will instruct you on the presumption of
2 innocence and the government's burden of proof in this case.
3 The defendant has pleaded not guilty. In so doing he has
4 denied every allegation against him. As a result of the
5 defendant's plea of not guilty, the burden is on the
6 prosecution to prove the defendant's guilt beyond a reasonable
7 doubt. This burden never shifts to the defendant for the
8 simple reason that the law never imposes upon a defendant in a
9 criminal case the burden or duty of calling any witness or
10 producing any evidence.

11 The law presumes the defendant to be innocent of all
12 charges against him. I, therefore, instruct you that the
13 defendant is to be presumed by you to be innocent throughout
14 your deliberations.

15 The defendant began the trial here with a clean slate.
16 This presumption of innocence alone is sufficient to acquit the
17 defendant unless you as jurors are unanimously convinced beyond
18 a reasonable doubt of the defendant's guilt, after a careful
19 and impartial consideration of all of the evidence in the case.
20 If the prosecution fails to sustain its burden as to the
21 defendant, then you must find the defendant not guilty. This
22 presumption was with the defendant when the trial began,
23 remains with him even now as I speak to you, and will continue
24 with him during your deliberations unless and until you are
25 convinced that the prosecution has proven him guilty beyond a

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1 reasonable doubt.

2 Now, the next question is, what is reasonable doubt?
3 It is doubt that a reasonable person has after carefully
4 weighing all of the evidence or doubt that would cause a
5 reasonable person to hesitate to act in a matter of importance
6 in his or her own personal life. Proof beyond a reasonable
7 doubt is proof of such a convincing character that a reasonable
8 person would not hesitate to rely and act upon it in the most
9 important of his or her own affairs.

10 In a criminal case, the burden is at all times upon
11 the prosecution to prove guilt beyond a reasonable doubt. The
12 law does not require that the prosecution prove guilt beyond
13 all possible doubt; rather, proof beyond a reasonable doubt is
14 sufficient to convict. The burden never shifts to the
15 defendant, which means that it is always the prosecution's
16 burden to prove each of the elements of the crimes charged
17 against the defendant beyond a reasonable doubt.

18 If, after a fair and impartial consideration of all
19 the evidence, or the lack of evidence, you have a reasonable
20 doubt as to the count you are considering as to the defendant,
21 then you must acquit the defendant on that count. On the other
22 hand, if after fair and impartial consideration of all the
23 evidence you are satisfied of the guilt of the defendant beyond
24 a reasonable doubt, it is your duty to convict the defendant.

25 In determining the facts, you must rely upon your own

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1 recollection of the evidence. Evidence consists of the
2 testimony of witnesses, the exhibits that have been received,
3 and the stipulations of the parties that I've read to you.

4 The statements and arguments made by the lawyers are
5 not evidence. Their arguments are intended to convince you
6 what conclusions you should draw from the evidence or lack of
7 evidence. You should weigh and evaluate the lawyers' argument
8 carefully, but you must not confuse them with the evidence. As
9 to the evidence presented at trial, it is your recollection
10 that governs, not the statements of the lawyers.

11 You should also bear in mind that a question put to a
12 witness is never evidence. It is the answer to the question
13 that is evidence. However, if a witness affirms the facts in a
14 question by answering yes, you may consider the facts in that
15 question to be evidence. Another exception to this is you may
16 not consider any answer that I directed you to disregard or
17 that I ordered to be stricken from the record.

18 Next I'll talk about direct and circumstantial
19 evidence.

20 There are two types of evidence that you may properly
21 use in deciding whether the defendant is guilty or not guilty
22 of the crimes with which he is charged. One type of evidence
23 is called direct evidence. Direct evidence of a fact in issue
24 is presented when a witness testifies to that fact based on
25 what he or she personally saw, heard, or observed. In other

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1 words, what a witness testifies about a fact in issue on the
2 basis of that witness' own knowledge by virtue of what he or
3 she feels, sees, touches, or hears, that is direct evidence.

4 The second type of evidence is circumstantial
5 evidence. Circumstantial evidence is evidence that tends to
6 prove a disputed fact indirectly by proof of other facts.

7 There is a simple example of circumstantial evidence that I
8 gave you on the first day of trial and I'll repeat it now.

9 Assume that when you came into the courtroom this
10 morning the sun was shining and it was a nice day outdoors.
11 Assume that the courtroom shades were drawn and you could not
12 look outside. Assume further that as you were sitting here
13 someone walked in with an umbrella that was dripping wet and
14 then a few minutes later somebody else walked in with a
15 raincoat that was also dripping wet.

16 Now, because you could not look outside the courtroom
17 and you could not see whether it was raining, you would have no
18 direct evidence of that fact. But on the combination of facts
19 that I have asked you to assume it would be reasonable and
20 logical for you to conclude that it was raining. That's all
21 there is to circumstantial evidence. You infer on the basis of
22 your reason, experience, and common sense from one established
23 fact the existence or nonexistence of some other fact.

24 Drawing inferences is not the same as guesswork or
25 speculation. An inference is a logical, factual conclusion

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1 that you might reasonably draw from other facts that have been
2 proven. It is sometimes difficult to prove material facts such
3 as state of mind by direct evidence. Usually such facts are
4 established by circumstantial evidence and the reasonable
5 inferences you draw. Circumstantial evidence may be given as
6 much weight as direct evidence.

7 You should draw no inference or conclusion for or
8 against any party on the basis of the lawyers' objections or my
9 rulings on any objections. Counsel have a right and duty to
10 make legal objections. Nothing I say is evidence. If I
11 commented on the evidence at any time, do not accept any
12 statements in place of your recollection or your
13 interpretation. It is your recollection and interpretation
14 that govern.

15 Also, do not draw any inference from any of my rulings
16 which do not indicate any view on my part. You should not
17 speculate on what I may think.

18 Further, do not concern yourself with what was said at
19 side bar conferences or during my discussions with counsel.
20 Those discussions related to rulings of law.

21 At times I may have admonished a witness or directed a
22 witness to be responsive to questions or to keep his or her
23 voice up. At times I asked a question myself. Any questions
24 that I asked, or instructions that I gave, were intended only
25 to clarify the presentation of the evidence. You should draw

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1 no inference or conclusion of any kind, favorable or
2 unfavorable, with respect to any comment, question, or
3 instruction of mine. Nor should you infer that I have any
4 views as to the credibility of any witness, the weight of the
5 evidence, or how you should decide any issue that is before
6 you. That is your role.

7 Finally, the personalities and conduct of counsel are
8 not in any way at issue. If you formed conclusions of any kind
9 about any lawyer in the case, favorable or unfavorable, those
10 opinions should not enter into your deliberations.

11 I am going to give you a few general instructions as
12 to how you may determine whether witnesses are credible and
13 reliable and whether the witness has told the truth at this
14 trial. It's really just a matter of using your common sense,
15 your judgment, and your experience. First, consider how well
16 the witness was able to observe or hear what he or she
17 testified about. The witness may be honest but mistaken. How
18 did the witness' testimony impress you? Did the witness appear
19 to be testifying honestly or candidly? Were the witness'
20 answers direct or were they evasive? Consider the way the
21 witness acted, his or her way of testifying, and the strength
22 and accuracy of his or her recollection. Consider whether any
23 outside factors might have affected a witness' ability to
24 perceive events.

25 Consider the substance of the testimony. How does the

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1 witness' testimony compare with other proof in the case? Is it
2 corroborated or is it contradicted by other evidence? If there
3 is a conflict, does any version appear reliable, and, if so,
4 which version seems more reliable?

5 In addition, you may consider whether a witness had
6 any possible bias or relationship with a party or any possible
7 interest in the outcome of the case. Such a bias or
8 relationship does not necessarily make the witness unworthy of
9 belief. These are simply factors that you may consider.

10 If a witness made statements in the past that are
11 inconsistent with his or her testimony during the trial
12 concerning facts that are at issue here, you may consider that
13 fact in deciding how much of the testimony, if any, to believe.
14 In making this determination, you may consider whether the
15 witness purposely made a false statement or whether it was an
16 innocent mistake. You may also consider whether the
17 inconsistency concerns an important fact or merely a small
18 detail, as well as whether the witness had an explanation for
19 the inconsistency and, if so, whether that explanation appealed
20 to your common sense.

21 If you find that a witness has testified falsely as to
22 any material fact or if you find that a witness has been
23 previously untruthful when testifying under oath or otherwise,
24 you may reject that witness' testimony in its entirety or you
25 may accept only those parts that you believe to be truthful or

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1 that are corroborated by other independent evidence in the
2 case.

3 Under your oath as jurors you are not to be swayed by
4 sympathy. You are to be guided solely by the evidence in this
5 case in determining whether the prosecution has proved the
6 defendant's guilt beyond a reasonable doubt.

7 It is for you, and you alone, to decide whether the
8 prosecution has proved beyond a reasonable doubt that the
9 defendant is guilty of the crimes charged solely on the basis
10 of the evidence and subject to the law as I have instructed
11 you. It must be clear to you that if you let fear, prejudice,
12 bias, or sympathy interfere with your thinking, there is a risk
13 that you will not arrive at a true and just verdict.

14 If you have a reasonable doubt as to the defendant's
15 guilt on a charge, then you must render a verdict of acquittal
16 on that charge against the defendant. On the other hand, if
17 you find that the prosecution has met its burden of proving the
18 guilt of the defendant beyond a reasonable doubt with respect
19 to a particular count, then you should not hesitate because of
20 sympathy or any other reason to render a verdict of guilty on
21 that charge.

22 I also caution you that under your oath as jurors you
23 cannot consider as part of your deliberations the punishment
24 that may be imposed upon the defendant if he is convicted. The
25 duty of imposing punishment rests exclusively upon the Court.

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1 Your verdict must be unanimous with respect to each
2 count. Each juror is entitled to his or her opinion, but you
3 are required to exchange views with your fellow jurors and
4 discuss the evidence. If you have a point of view and your
5 discussion with other jurors changes your mind on a particular
6 point, you may change your mind if you are convinced that the
7 opposite point of view is really one that satisfies your
8 judgment and conscience. You must not change your mind simply
9 reply because you are outnumbered or outweighed. You should
10 vote with the others only if you are convinced on the evidence,
11 facts, and the law that it is the correct way to decide the
12 case.

13 Remember at all times, you are not partisans. You are
14 judges, judges of the facts. Your sole interest is to seek the
15 truth from the evidence in the case. I will say a little bit
16 more about your duties in deliberating after the closing
17 arguments.

18 Let me turn now to the substantive instructions. The
19 defendant is formally charged in an indictment. The indictment
20 is merely a charge or accusation. It is not evidence and it
21 does not prove or even indicate guilt. As a result, you are to
22 give it no weight in deciding the defendant's guilt or
23 nonguilt. What matters is the evidence you've heard at trial.
24 The defendant is presumed innocent and it is the prosecution's
25 burden to prove the defendant's guilt beyond a reasonable

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1 doubt.

2 The indictment in this case contains four counts.
3 Each count charges a separate offense or crime. You must,
4 therefore, consider each count separately and you must return a
5 separate verdict on each count.

6 Count One of the indictment charges that in or about
7 March 2013, Antione Chambers conspired or agreed with others to
8 commit a robbery of an individual believed to be in possession
9 of money from drugs in the Bronx, New York.

10 Count Two of the indictment charges that on or about
11 March 25, 2013, Antione Chambers committed a robbery of an
12 individual believed to be in possession of money from drugs in
13 the Bronx, New York.

14 Count Three of the indictment charges that on or about
15 March 25, 2013, Antione Chambers and others kidnapped an
16 individual for the purpose of carrying out a robbery of money
17 for drugs.

18 Count Four of the indictment charges that on March 25,
19 2013, Antione Chambers, during and in relation to a conspiracy
20 to commit robbery or kidnapping, knowingly did use and carry a
21 firearm and in furtherance of such crime did possess a firearm
22 and did aid and abet the use, carrying, and possession of a
23 firearm which was brandished.

24 Count One: Robbery conspiracy.

25 The first count of the indictment charges that the

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1 defendant violated Section 1951 of Title 18 of the United
2 States Code. That section provides: Whoever in any way or
3 degree obstructs, delays, or affects commerce for the movement
4 of any article or commodity in commerce by robbery or extortion
5 or attempts or conspires so to do, or commits or threatens
6 physical violence to any person or property in furtherance of a
7 plan or purpose to do anything in violation of this section
8 shall be guilty of a crime.

9 Specifically, Count One charges a conspiracy to commit
10 armed robbery. A conspiracy is a kind of criminal partnership,
11 an agreement of two or more persons to join together to
12 accomplish some unlawful purpose.

13 The crime of conspiracy to commit robbery is an
14 independent offense, separate and distinct from an actual
15 robbery. You may find the defendant guilty of the crime of
16 conspiracy to commit robbery, even if the conspiracy was not
17 successful and there was no actual robbery committed.

18 To meet the burden of proving the robbery conspiracy
19 charged in Count One, the prosecution must prove two elements
20 beyond a reasonable doubt:

21 First, the prosecution must prove the existence of the
22 robbery conspiracy charged in Count One; and

23 Second, the prosecution must prove that the defendant
24 knowingly and unlawfully became a member of the conspiracy.
25 I'll talk about each of these elements in depth now.

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1 The first element is the existence of a conspiracy
2 that had as its object the illegal purpose charged in the
3 indictment. A conspiracy is a combination, agreement, or
4 understanding of two or more persons to accomplish by concerted
5 action a criminal or unlawful purpose. The unlawful purpose
6 alleged to have been the object of the conspiracy charged in
7 Count One is the commission of a robbery.

8 The gist of the crime of conspiracy is an unlawful
9 agreement between two or more people to violate the law. The
10 first element of the crime of conspiracy has two parts: (1) an
11 agreement and (2) an illegal object of the conspiracy. I am
12 now going to describe both parties of this element to you.

13 First, an agreement.

14 First, to meet its burden of proof on this element,
15 the prosecution must prove that there was an agreement, meaning
16 that two or more people in some way or manner came to an
17 understanding, either spoken or unspoken, to violate the law.
18 However, the prosecution is not required to show that two or
19 more people sat down around a table and entered into a solemn
20 pact, stating that they had formed a conspiracy to violate the
21 law and spelling out all the details of the plan, or the part
22 that each of the persons who was a party to the conspiracy was
23 going to play.

24 Common sense will tell you that when people, in fact,
25 undertake to enter into a criminal conspiracy, much is left to

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1 the unexpressed understanding. By its very nature, a
2 conspiracy is almost always secret.

3 When people enter into a conspiracy to accomplish an
4 unlawful end, they become agents or partners of one another in
5 carrying out the conspiracy. In determining the factual issues
6 before you, you may take into account against the defendant any
7 acts done or statements made by any of the alleged
8 coconspirators during the course of the conspiracy. And any
9 inferences that can be drawn from those acts or statements,
10 even though such acts or statements were not made in the
11 presence of the defendant or were made without his knowledge.
12 Sometimes, the only evidence that is available is that of
13 disconnected acts that, when taken together in connection with
14 one another, show a conspiracy or an agreement to secure a
15 particular result just as satisfactorily and conclusively as
16 more direct proof.

17 It is sufficient to establish the existence of the
18 conspiracy if, after considering all of the relevant evidence,
19 you find beyond a reasonable doubt that the minds of at least
20 two alleged conspirators met in an understanding way, and that
21 they agreed, as I've explained, to work together to accomplish
22 the object or objective of the conspiracy charged in Count One.

23 The second part of the first element relates to the
24 object or objective of the conspiracy. Count One of the
25 indictment charges that the object of the conspiracy was to

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1 commit robbery and specifically a robbery that would and did
2 obstruct, delay, and affect commerce and the movement of
3 articles and commodities in commerce.

4 Later, when I explain Count Two, which is the
5 substantive crime corresponding to the objective of conspiracy
6 charged in Count One, I will explain the elements of the
7 robbery charge.

8 Turning now to the second element, if you conclude
9 that the prosecution has proven beyond a reasonable doubt that
10 the conspiracy charged in the indictment existed and that the
11 conspiracy had as its object the illegal purpose charged in the
12 indictment, then you must next determine the second question,
13 whether the defendant participated in the conspiracy with
14 knowledge of its unlawful purpose and in furtherance of its
15 unlawful objective.

16 The prosecution must prove beyond a reasonable doubt
17 that the defendant unlawfully and knowingly entered into the
18 conspiracy, that is, with a purpose to violate the law, and
19 that the defendant agreed to take part in the conspiracy to
20 promote and cooperate in its unlawful objective.

21 The terms unlawfully and knowingly are used because,
22 if you find that the defendant did join the conspiracy, you
23 must also consider whether the prosecution has proven beyond a
24 reasonable doubt that in doing so the defendant knew what he
25 was doing. In other words, the government must prove beyond a

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1 reasonable doubt that the defendant joined the conspiracy
2 deliberately and voluntarily.

3 Unlawfully simply means contrary to law. The
4 defendant need not have known that he was breaking any
5 particular law, but he must have been aware of the generally
6 unlawful nature of his acts.

7 An act is done knowingly if it is done deliberately
8 and purposely, that is, the defendant's acts must have been the
9 product of defendant's conscious objective, rather than the
10 product of a mistake or accident, or mere negligence, or some
11 other innocent reason.

12 Knowledge, of course, is a matter of inference from
13 the proven facts, since you cannot read someone's mind. You
14 have before you the evidence of acts alleged to have taken
15 place by or with the defendant or in his presence. The
16 government contends that these acts show beyond a reasonable
17 doubt the defendant's knowledge of the unlawful purpose of the
18 conspiracy.

19 The defendant denies that he was a member of a
20 conspiracy. Specifically, the defendant denies that he
21 committed the acts alleged by the prosecution to be sufficient
22 to establish that he knowingly joined the charged conspiracy.
23 It is for you to determine whether the prosecution has
24 established beyond a reasonable doubt that the defendant
25 possessed such knowledge and intent.

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1 It is not necessary for the prosecution to show that
2 the defendant was fully informed as to all the details of the
3 conspiracy in order for you to infer knowledge on the part of
4 the defendant. Similarly, it's not necessary for the defendant
5 to have known every member of the conspiracy, nor is it
6 necessary for the defendant to have received any monetary
7 benefit from his participation in the conspiracy, or to have a
8 financial stake in the outcome of the alleged joint venture.
9 It's enough if the defendant participated in the conspiracy
10 unlawfully and knowingly as I have defined those terms.

11 The duration and extent of the defendant's
12 participation has no bearing on the issue of the defendant's
13 guilt. If you find that the defendant joined the conspiracy at
14 any time in its progress, then the defendant is held
15 responsible for all that was done before he joined and all that
16 was done during the conspiracy's existence while he was a
17 member. Each member of a conspiracy may perform separate and
18 distinct acts. Some conspirators play major roles, while
19 others play minor roles in the scheme. An equal law is not
20 what the law requires. In fact, even a single act may be
21 sufficient to draw the defendant within the scope of the
22 conspiracy.

23 However, a person's mere association with members of a
24 conspiracy does not make that person a member of the
25 conspiracy, even when that association is coupled with

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1 knowledge that a conspiracy is taking place. Mere presence at
2 the scene of the crime, even coupled with knowledge that a
3 crime is taking place, is not sufficient to support a
4 conviction. In other words, knowledge without agreement and
5 participation is not sufficient. What is necessary is proof
6 beyond a reasonable doubt that the defendant joined in the
7 conspiracy with knowledge of its unlawful purpose and with an
8 intent to aid the accomplishment of its unlawful objectives.

9 In sum, the prosecution must prove beyond a reasonable
10 doubt that the defendant, with an understanding of the unlawful
11 character of the conspiracy, knowingly engaged advised, or
12 assisted in the conspiracy for the purpose of committing a
13 robbery. The defendant thereby became a knowing and willful
14 participant in the unlawful agreement, that is to say, he
15 became a conspirator. Once a conspiracy is formed, it is
16 presumed to continue until either its objective is accomplished
17 or there is no affirmative act of termination by its members.
18 Once a person is found to be a member of a conspiracy, he is
19 presumed to be a member of the conspiracy until the conspiracy
20 is terminated, unless it's shown by some affirmative proof that
21 the person withdrew and disassociated himself from it.

22 The indictment charges that the alleged conspiracy
23 existed in or about March 2013. It's not essential that the
24 prosecution prove that the conspiracy alleged started and ended
25 on any specific dates. Indeed, it's sufficient if you find

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1 that the conspiracy was formed and that it existed for some
2 time within or around the dates set forth in the indictment,
3 which is in or around March 2013. It does not matter if a
4 specific event or transaction is alleged to have occurred on or
5 about a certain date, and the evidence indicates that, in fact,
6 it occurred on another date. The law only requires a
7 substantial similarity between the dates alleged in the
8 indictment and the dates established by the testimony and other
9 evidence.

10 That is Count One.

11 I will now turn to Count Two of the indictment which
12 alleges robbery.

13 The allegations contained in Count Two are brought not
14 only under the law that prohibits robbery, but also under a
15 provision of the federal criminal code that makes it a crime
16 for anyone to aid, abet, counsel, command, induce, or procure
17 the commission of another crime. I will provide instructions
18 on these concepts in a few minutes.

19 To sustain its burden of proof on Count Two, the
20 government must prove beyond a reasonable doubt each of the
21 following elements:

22 First, the government must prove that the defendant
23 knowingly obtained or took the personal property of another or
24 from the presence of another.

25 Second, the government must prove that the defendant

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1 took the property against the victim's will by actual or
2 threatened force, violence or fear of injury, whether immediate
3 or in the future.

4 Third, the government must prove that such actions
5 actually or potentially in any way or degree obstructed,
6 delayed, or affected interstate or foreign commerce.

7 (Continued on next page)

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1 THE COURT: The first element the government must
2 prove beyond a reasonable doubt is that the defendant knowingly
3 obtained the personal property of another or from the presence
4 of another. The term property includes tangible and intangible
5 things of value. In this case, the government alleges that the
6 object of the robbery charged in Count Two was narcotics
7 proceeds or money from drugs.

8 The second element the government must prove beyond a
9 reasonable doubt is that the defendant unlawfully took the
10 personal property against the victim's will, by actual or
11 threatened force, violence, or fear of injury, whether
12 immediate or in the future.

13 It is not necessary that the government prove that
14 force, violence and fear were all used or threatened. The
15 government satisfies its burden if it proves beyond a
16 reasonable doubt that any of these methods were employed.
17 However, there must be some nexus between the threat of use of
18 force and the taking of property.

19 In considering whether the defendant used, or
20 threatened to use, violence or fear, you should give those
21 words their common, ordinary meaning, and understand them as
22 you normally would. The violence does not have to be directed
23 at the person whose property was taken. The use of a threat of
24 force or violence might be aimed at a third person, or at
25 causing financial rather than physical injury. A threat may be

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1 made verbally or by physical gesture. Whether a statement or
2 physical gesture by the defendant actually was a threat depends
3 upon the surrounding facts.

4 Fear exists if at least one victim experiences
5 anxiety, concern, or worry over expected personal harm or
6 business loss, or over financial or job security. The
7 existence of fear must be determined by the facts existing at
8 the time of the defendant's actions.

9 Your decision whether the defendant used or threatened
10 fear of injury involves a decision about the victim's state of
11 mind at the time of the defendant's actions. You must
12 determine, after careful consideration the circumstances and
13 the evidence, whether fear would reasonably have been the
14 victim's state of mind.

15 Looking at the situation and the actions of people
16 involved may help you determine what their state of mind was.
17 You can consider this kind of evidence, which is technically
18 called circumstantial evidence, in deciding whether property
19 was obtained by a defendant through the use of threat of fear.

20 You've also heard the testimony of some witnesses
21 describing their state of mind - that is, how they felt - in
22 giving up the property. This testimony was allowed to help you
23 in deciding whether the property was obtained by fear. You
24 should consider this testimony for that purpose only, and for
25 no other purpose in that case. You are not bound by the

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1 statements of the witnesses in determining their states of
2 mind, but you may consider all the facts and circumstances or
3 lack of evidence in determining the state of mind of each
4 witness at the time the alleged crimes occurred.

5 It is not necessary that the fear be a consequence of
6 a direct threat; it is sufficient that the surrounding
7 circumstances render the victim's fear reasonable. You must
8 find beyond a reasonable doubt that a reasonable person would
9 have been fearful under the circumstances.

10 If you decide that the defendant obtained another's
11 property, against his will, by the use or threat of force,
12 violence, or fear of injury, you must then decide whether this
13 action would affect interstate or foreign commerce in any way
14 or degree. You must determine whether there is an actual or
15 potential effect on commerce between any two or more states, or
16 on commerce within one state that goes to another state or
17 foreign country.

18 The requirement of showing an effect on commerce
19 involves only a minimal burden of proving a connection to
20 interstate or foreign commerce and is satisfied by conduct that
21 affects commerce in any way or degree. The requirement may be
22 satisfied by a showing of a very slight or potential effect on
23 interstate or foreign commerce. For example, if a successful
24 robbery of money would prevent the use of those funds to
25 purchase articles which travel through interstate commerce,

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1 that would be a sufficient effect on interstate commerce.

2 If you decide that interstate or foreign commerce
3 would potentially or probably be affected if the defendant had
4 successfully and fully completed his actions, then the element
5 of affecting interstate commerce is satisfied. You do not have
6 to find that interstate or foreign commerce is actually
7 affected.

8 The defendant need not have intended or anticipated an
9 effect on interstate or foreign commerce. You may find that
10 the effect is a natural consequence of his actions. If you
11 find that the defendant intended to take certain actions - that
12 is, he did the acts charged in the indictment in order to
13 obtain property - and you find those actions have either
14 caused, or would probably cause, an effect on interstate or
15 foreign commerce, then you may find the requirements of this
16 element have been satisfied.

17 Nor do you have to decide whether the effect on
18 interstate or international commerce was or would have been
19 harmful or beneficial to a particular business, or to commerce
20 in general. The government satisfies its burden of proving an
21 effect on commerce if it proves beyond a reasonable doubt any
22 effect, whether harmful or not.

23 If you find beyond a reasonable doubt that the target
24 of the robbery purchased or sold items that flowed in
25 interstate or foreign commerce, and that the money or items

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1 that the defendant conspired to take belonged to the target,
2 then this element will have been met.

3 Moreover, if you find beyond a reasonable doubt that
4 the defendant believed that the target of the robbery purchased
5 or sold items that flowed in interstate or foreign commerce,
6 then this element will be satisfied, even if the defendant's
7 belief ultimately proved incorrect. In other words, even if
8 the target of the robbery was not in fact engaged in interstate
9 or foreign commerce, this element will be satisfied if, at the
10 time of the robbery, you find beyond a reasonable doubt that
11 the defendant intended to commit a robbery that would have, or
12 potentially could have, affected interstate or foreign
13 commerce.

14 When considering this element, it's important for you
15 to know that commerce affected or potentially affected need not
16 be lawful. Activities affecting or potentially affecting
17 unlawful interstate activity, such as drug dealing and
18 trafficking, fall under the statute. Therefore, if you find
19 beyond a reasonable doubt that the defendant intended, for
20 example, to rob drugs, and you find those drugs traveled in
21 interstate or foreign commerce, this element has been
22 satisfied.

23 The fourth element the government must establish
24 beyond a reasonable doubt with respect to the robbery charge is
25 that the defendant acted unlawfully and knowingly. I already

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1 explained these concepts to you, and you should follow my
2 previous instructions on that point.

3 The defendant is also charged with aiding and abetting
4 with respect to this charge; accordingly, it would be
5 sufficient for this element if the defendant aided and abetted
6 another person in the robbery charge.

7 Aiding and abetting liability is its own theory of
8 criminal liability. In effect, it is a theory of liability
9 that permits the defendant to be convicted of a specified
10 crime, if the defendant, while not himself committing the
11 crime, assisted another person or persons in committing the
12 crime.

13 Under the federal aiding and abetting statute, whoever
14 aids, abets, counsels, commands, induces or procures the
15 commission of an offense is punishable as a principal. In
16 other words, it is not necessary for the government to show
17 that the defendant physically committed a crime in order for
18 you to find the defendant guilty. If you do not find beyond a
19 reasonable doubt that the defendant physically committed a
20 crime, you may, under certain circumstances, still find him
21 guilty of the crime as an aider or abettor.

22 A person who aids and abets another to commit an
23 offense is just as guilty of that offense as if he personally
24 had committed it. You may find the defendant guilty of the
25 substantive crime, therefore, if you find beyond a reasonable

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1 doubt that the government has proven that another person
2 actually committed the crime and that the defendant aided and
3 abetted that person in the commission of the offense.

4 As you can see, the first requirement is that another
5 person has committed the crime charged. Obviously, no one can
6 be convicted of aiding and abetting the criminal acts of
7 another if no crime is committed by the other person. But if
8 you do find that a crime was committed, then you must consider
9 whether the defendant aided or abetted the commission of the
10 crime.

11 To aid and abet another to commit a crime, it is
12 necessary that the defendant willfully and knowingly associate
13 himself in some way with the crime, and that the defendant
14 willfully and knowingly seek by some act to help make the crime
15 succeed.

16 Participation in a crime is willful if action is taken
17 voluntarily and intentionally, or in the case of a failure to
18 act, with the specific intent to fail to do something the law
19 requires to be done - that is to say, with a bad purpose either
20 to disobey or to disregard the law.

21 However, I must caution you that the mere presence of
22 the defendant where a crime is being committed, even coupled
23 with knowledge by the defendant that the crime was being
24 committed, or the mere acquiescence by the defendant in the
25 criminal conduct with others, even with guilty knowledge, is

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1 not sufficient to establish aiding and abetting. An aider and
2 abettor must have some interest in the criminal act or acts.

3 To determine whether the defendant aided and abetted
4 the commission of a crime, ask yourself these questions: Did
5 the defendant participate in the crime charged as something he
6 wished to bring about? Did the defendant associate himself
7 with the criminal venture knowingly and willfully? Did the
8 defendant seek by his actions to make the criminal venture
9 succeed?

10 If the answer to all three is "yes" beyond a
11 reasonable doubt, then the defendant is an aider and abettor
12 and therefore guilty of the offense charged in Count Two.

13 If the answer to any of the three is "no," then the
14 defendant is not an aider and abettor and is not guilty of that
15 offense.

16 So now we turn to the third charge, which is
17 kidnapping. Count Three charges the substantive crime of
18 kidnapping. Specifically, Count Three charges the defendant
19 with engaging in kidnapping on or about March 25, 2013. In
20 order to sustain its burden of proof with respect to the
21 allegation of kidnapping charged in Count Three, the government
22 must prove beyond a reasonable doubt the following four
23 elements:

24 First, the government must prove that the defendant
25 seized, or confined, or kidnapped, or abducted, or carried away

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1 an individual as described in Count Three;

2 Second, the government must prove that the defendant
3 held the individual for ransom, reward, or for any other
4 reason;

5 Third, the government must prove that the individual
6 was transported in interstate or foreign commerce and that the
7 defendant traveled in interstate or foreign commerce, or used
8 any means, facility, instrumentality of interstate or foreign
9 commerce in committing and in furtherance of the offense;

10 Fourth, the government must prove the defendant acted
11 unlawfully, knowingly and willfully.

12 The defendant is also charged with aiding and abetting
13 in the kidnapping; accordingly, it would be sufficient for this
14 element if the defendant aid and abetted another person in the
15 kidnapping.

16 I have already instructed about the law of aiding and
17 abetting in detail and you should use those instructions here.
18 Now, I will go through each of these elements in more detail.

19 The first element the government must prove beyond a
20 reasonable doubt is that the defendant seized, confined,
21 kidnapped, abducted, or carried away a victim.

22 Kidnap means take and carry away a person by force and
23 against his or her will. Seize, confine, abduct or carry away
24 all mean the physical and bodily taking and carrying away of a
25 person, or the holding or restriction of someone by force or

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1 without that person's consent.

2 A second element the government must prove beyond a
3 reasonable doubt is that the defendant took the individual for
4 reward or financial gain. It is sufficient to satisfy this
5 element if the government proves that at the time the defendant
6 kidnapped the individual, he did so for some purpose. If you
7 find the defendant did not hold an individual for the purpose
8 of carrying out a robbery of narcotics proceeds, or if you have
9 reasonable doubt as to this element, then it's your duty to
10 acquit on this count.

11 The third element the government must prove beyond a
12 reasonable doubt is that a victim of the kidnapping was
13 transported in interstate commerce, or that the defendant
14 traveled in interstate commerce or used the mail or any means,
15 facility, or instrumentality of interstate commerce in
16 committing or in furtherance of the commission of the offense.

17 The government may satisfy this element by proving
18 beyond a reasonable doubt that the defendant used the United
19 States mail or any means, facility or instrumentality of
20 interstate or foreign commerce in committing or in furtherance
21 of the commission of the offense. The term "means, facility,
22 or instrumentality of interstate or foreign commerce" includes
23 the use of a telephone in furtherance of committing the
24 offense.

25 The final elements the government must prove beyond a

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1 reasonable doubt is that the defendant acted unlawfully and
2 knowingly. I've already defined these terms. The same
3 definitions apply with respect to Count Three.

4 In order to satisfy this element, the government must
5 show beyond a reasonable doubt that the defendant knew that a
6 victim of the kidnapping was not with him voluntarily but,
7 rather, was forced or made to go with him.

8 The defendant is also charged with aiding and abetting
9 with respect to this charge; accordingly, it would be
10 sufficient for this element if the defendant aided and abetted
11 another person in the kidnapping. You should rely on the
12 instructions I have given you about aiding and abetting
13 liability.

14 Count Four is use of a firearm in connection with
15 robbery and kidnapping. So, I have completed my instructions
16 on Counts One, Two and Three. I'll instruct you now on the
17 elements of Count Four.

18 Count Four alleges a violation of Section 924(c) of
19 the Federal Criminal Code. That provision makes it is a crime
20 for any person, "during and in relation to any crime of
21 violence...for which the person may be prosecuted in a court of
22 the United States [to] use[] or carr[y] a firearm," or, "in
23 furtherance of any such crime, [to] possess[] a firearm."

24 Count Four is a firearms count connected to the
25 robbery conspiracy charged in Count One and the kidnapping

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1 charged in Count Three. This means that you cannot consider
2 Count Four unless you first determine that the defendant is
3 guilty of either the robbery conspiracy charged in Count One or
4 is guilty of the kidnapping charged in Count Three.

5 To sustain its burden of proof on Count Four, charging
6 the defendant with possession of a firearm during and in
7 relation to a crime of violence, the prosecution must prove the
8 following three elements beyond a reasonable doubt:

9 First, that on or about the dates alleged in Count
10 Four of the indictment, the defendant used or carried or
11 possessed a firearm, or any combination of those acts, or aided
12 and abetted the use, carrying or possession of a firearm by
13 another; and

14 Second, that the defendant used or carried the
15 firearm, or aided and abetted the use and carrying of the
16 firearm, during and in relation to the specified crime of
17 violence, or that the defendant possessed a firearm, or aided
18 and abetted the possession of a firearm, in furtherance of that
19 same crime; and

20 Third, that the defendant acted knowingly.

21 I'll now discuss each element in further detail.

22 The first element the government must prove beyond a
23 reasonable doubt in Count Four is that on or about March 25,
24 2013, the date in the indictment, the defendant used, carried,
25 or possessed a firearm.

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1 As used in the statute, the term "firearm" means "any
2 weapon...which will or is designed to or may readily be
3 converted to expel a projectile by the action of an explosive."
4 I instruct you that a gun is a firearm.

5 In considering the specific element of whether the
6 defendant used, carried, or possessed a firearm, it does not
7 matter whether the weapon was loaded or operable - meaning
8 useable at the time of the crime. Operability is not relevant
9 to your determination of whether a weapon is a firearm.

10 In order to prove that the defendant "used" the
11 firearm, the prosecution must prove beyond a reasonable doubt
12 that there was "an active employment" of the firearm by the
13 defendant during and in relation to the commission of the crime
14 of violence. This does not mean that the defendant must have
15 actually fired or tried to fire the weapon, although each of
16 these actions will obviously be considered a use of the weapon.

17 Brandishing or even referring to the weapon so that
18 others present knew that the defendant has the firearm
19 available, if needed, all constitute uses of a firearm.

20 "Brandishing" means displaying all or part of the
21 firearm, or otherwise making the presence of the firearm known
22 to another person in order to intimidate that person. The mere
23 possession of a firearm at or near the site of the crime
24 without active employment is not enough to count as use of a
25 firearm.

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1 In order to prove that the defendant "carried" a
2 firearm, the prosecution must prove beyond a reasonable doubt
3 that the defendant had a weapon within his control so that it
4 was available in such a way that it furthered the commission of
5 the crime. The defendant need not have held the firearm
6 physically or have had actual possession of it on his person.

7 If you find that the defendant had control over the
8 place where the firearm was located, and had the power and
9 intention to exercise control over the firearm, and that the
10 firearm was immediately available to him in such a way that it
11 furthered the commission of a crime of violence, you may find
12 that the prosecution has proven that the defendant carried a
13 firearm.

14 The legal concept of possession may differ from the
15 everyday usage of the term, so let me explain it. Most of us
16 think of possession as having physical custody or control of an
17 object. However, a person does not need to have actual,
18 physical possession, that is, physical custody of an object, in
19 order to be in legal possession of it. If an individual has
20 the ability to exercise substantial control over an object that
21 he does not have in his physical custody, and the intent to
22 exercise such control, then he is in possession of that
23 article. This is called constructive possession.

24 Control over an object may be demonstrated by the
25 existence of a working relationship between the person having

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1 such control and the person with actual physical custody. The
2 person having control possesses an object because he has an
3 effective working relationship with the people who have actual
4 physical custody of the object, and because he can direct the
5 movement or transfer of that object.

6 As an example, I possess law books in my chambers,
7 even though I'm here in my courtroom, which is on a different
8 floor. I have control of those books.

9 More than one person can have control over the same
10 firearm. The law recognizes that possession may be sole or
11 joint. If one person alone has actual or constructive
12 possession of a thing, possession is sole. If more than one
13 person has possession of it, as I have defined possession for
14 you, then possession is joint. That is what is meant by
15 "possession."

16 Possession of a firearm in furtherance of a crime of
17 violence requires that the defendant possess a firearm and that
18 the possession move the crime forward. The mere presence of a
19 firearm is not enough. Possession in furtherance requires that
20 the possession is in relation to and an essential part of the
21 crime. The firearm must have played some part in furthering
22 the crime in order for this element to be satisfied.

23 The defendant is also charged with aiding and abetting
24 with respect to this charge; accordingly, it would be
25 sufficient for this element if the defendant aided and abetted

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1 another person in the use, carrying, or possession of a
2 firearm. You should rely on the instructions I have given you
3 about aiding and abetting liability. However, some additional
4 instructions apply to this charge.

5 In order to convict the defendant of aiding and
6 abetting another's use or carrying of a firearm, or possession
7 of a firearm in furtherance of a crime of violence, the
8 government must establish (1) that the defendant actively
9 participated in the underlying crime of violence, here, (a) the
10 robbery conspiracy charged in Count One of the indictment (b)
11 the kidnapping charged in Count Three; and (2) that the
12 defendant did so with advance knowledge that another
13 participant in the robbery conspiracy charged in Count One or
14 the kidnapping charged in Count Three would use or carry a
15 firearm, or possess a firearm in furtherance of the charged
16 crimes of violence.

17 As to the first part, "active participation" does not
18 require that the defendant participated in each and every
19 element of the underlying crime of violence. Instead, the
20 defendant's participation may be limited to only one or some of
21 the elements of the underlying crimes of violence.

22 As to the second part, in order for a defendant to
23 have had "advanced knowledge" of another participant's use or
24 carrying of a firearm, or possession of a firearm in
25 furtherance of the crime of violence, the defendant needs to

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1 have had that knowledge at a point before or even during the
2 commission of the crime when the defendant still had the
3 opportunity to walk away from participating in the offense if
4 he chose to do so.

5 If a defendant who has the opportunity to walk away
6 from participating in an offense chooses to continue to
7 participate in the offense after learning that another
8 participant will use or carry a firearm, or possess a firearm
9 in furtherance of a crime of violence, or is currently using or
10 carrying a firearm, or possessing a firearm in furtherance of a
11 crime of violence, that defendant has the requisite advance
12 knowledge to make him an aider or abettor of the other
13 participant's use or carrying of a firearm, or possession of a
14 firearm in furtherance of a crime of violence. If the
15 government has not proved the requisite advanced knowledge
16 beyond a reasonable doubt, you must acquit the defendant of
17 that charge.

18 The second element that the government must prove
19 beyond a reasonable doubt is that the defendant used or carried
20 a firearm during and in relation to a crime of violence, or
21 possessed a firearm in furtherance of such a crime. Possession
22 in furtherance, as I indicated, requires that the possession be
23 incident to and an essential part of the crime. The firearm
24 must have played some part in furthering the crime in order for
25 this element to be satisfied.

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1 This means that, for example, unless you find that the
2 defendant participated in the crime of violence charged in
3 Count One or Count Three described in the indictment, you must
4 find him not guilty of Count Four.

5 You are instructed that kidnapping and robbery each
6 qualify as crimes of violence. I've already instructed you on
7 the law relevant to those crimes, and you should follow those
8 instructions here.

9 The third element that the government must prove
10 beyond a reasonable doubt is that the defendant knew that he
11 was using, carrying, or possessing a firearm, or aiding and
12 abetting the use, carry, or possession of a firearm, and that
13 he was acting knowingly in doing so. I have already instructed
14 you on what "knowingly" means in this context.

15 If, and only if, you find the defendant guilty on
16 Count Four, you will have to answer an additional question:
17 whether one or more firearms were brandished in the course of
18 the commission of the crime, whether by the defendant or
19 another.

20 Please note that whether the defendant or another
21 brandished a firearm in the course of the commission of the
22 crime does not affect your determination of whether the
23 government has met its burden of proof regarding the underlying
24 crime; instead, it is an additional question you must answer
25 only if you have already found that the government has proved

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1 the defendant guilty of the underlying crime beyond a
2 reasonable doubt.

3 In order to prove that the defendant or another
4 "brandished" the firearm, the government must prove that the
5 defendant or another displayed all or part of the firearm, or
6 otherwise made the presence of the firearm known to another
7 person, in order to intimidate that person. This does not mean
8 that the defendant or another must have actually fired or
9 attempted to fire the weapon, although each of those actions
10 would obviously involve brandishing the weapon.

11 In addition to the elements of each of the charges
12 that I have already described, for each crime charged in the
13 indictment, you must also consider whether any act in further
14 of the unlawful activity occurred within the Southern District
15 of New York. The place where such acts took place is called
16 venue.

17 The Southern District of New York includes all of
18 Manhattan, the Bronx and Westchester. It also includes all of
19 the waters surrounding Manhattan, Brooklyn, Staten Island, and
20 Long Island, and the air and bridges over those waters.

21 I should note that on this issue - and this issue
22 alone - the government need not prove venue beyond a reasonable
23 doubt, but only by a preponderance of the evidence. A
24 "preponderance" means that the evidence shows it is more likely
25 than not that something occurred. The government has satisfied

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1 its burden under the venue element if you conclude that it is
2 more likely than not that the crime charged or any act in
3 furtherance of the crime occurred in the Southern District of
4 New York.

5 If, on the other hand, you find that the government
6 has failed to prove the venue requirement by a preponderance of
7 the evidence for a particular count, then you must acquit the
8 defendant on that count.

9 Those are the substantive charges. I have a few final
10 general instructions that I'll give you at this point.

11 The indictment in this case refers to various dates.
12 The evidence might have established different dates. The law
13 only requires a substantial similarity between the dates
14 alleged and the dates established by the evidence.

15 Stipulations: In this case, you've heard evidence in
16 the form of stipulations. A stipulation is an agreement
17 between the parties. Some of the stipulations that you heard
18 contained facts that were agreed to be true, and others
19 describe testimony that a witness, if called, would have given.
20 You must accept as true the facts contained in these
21 stipulations, including that a witness would have given certain
22 testimony. However, it is for you to determine the weight, if
23 any, to be given that testimony or fact.

24 You have heard references to certain investigative
25 techniques that were used or not used by law enforcement

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1 authorities in the case. There is no legal requirement that
2 the government prove its case through any particular means.

3 Your concern is to determine whether or not, based on
4 the evidence or lack of evidence, the guilt of the defendant
5 has been proven beyond a reasonable doubt.

6 Consciousness of guilt: You have heard testimony that
7 the defendant fled after he believed that he was about to be
8 charged with committing the crime for which he is now on trial,
9 and he was stopped in New Jersey.

10 If you find that the defendant attempted to evade
11 arrest by fleeing, you may, but are not required to, infer that
12 the defendant believed that he was guilty of the crimes for
13 which he is here today.

14 Evidence of flight may not be used by you as a
15 substitute for proof of guilt. Flight does not create a
16 presumption of guilt. Flight alone, or consciousness of guilt
17 alone, are not sufficient to convict, and do not constitute
18 evidence beyond a reasonable doubt. Whether or not evidence of
19 flight shows that the defendant believed that he was guilty of
20 the crime for which he is now charged and the significance, if
21 any, to be given to such evidence, is for you, the jury, to
22 decide.

23 Persons not on trial: Some of the people who may have
24 been involved in the events leading to this trial are not on
25 trial. This does not matter. There is no requirement that all

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1 members of a conspiracy be charged and prosecuted, or tried
2 together, in the same proceeding. You may not draw any
3 inference, favorable or unfavorable, towards the government or
4 the defendant from the fact that certain people other than the
5 defendant are not named in the indictment. You may not
6 consider the absence of other people at trial in any way in
7 reaching your verdict.

8 Preparation of witnesses: You have heard that
9 witnesses have discussed the facts of the case and their
10 testimony with the lawyers before the witnesses appeared in
11 Court.

12 Although you may consider that fact when you are
13 evaluating a witness' credibility, there is nothing unusual or
14 improper about a witness meeting with lawyers before testifying
15 so the witness can be aware of the subjects he or she will be
16 questioned about.

17 Uncalled witnesses: There are persons whose names you
18 heard during the course of the trial, but did not appear to
19 testify. I instruct you that each party had an equal
20 opportunity or lack of opportunity to call any of these
21 witnesses. Therefore, you should not draw any inference or
22 reach any conclusions as to what they would have testified to
23 had they been called. Their absence should not affect your
24 judgment in any way. You should remember my instruction,
25 however, that the law does not impose on any defendant in a

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1 criminal case the burden or duty of calling any witnesses or
2 producing any evidence, and that it is the government's burden
3 to prove beyond a reasonable doubt each count in the indictment
4 as to the defendant.

5 The defendant's right not to testify: The defendant
6 did not testify in this case. Under our Constitution, a
7 defendant has no obligation to testify or to present any
8 evidence, because it is the government's burden to prove the
9 defendant's guilt beyond a reasonable doubt. That burden
10 remains with the government throughout the entire trial and
11 never shifts to the defendant. A defendant is never required
12 to prove that he is innocent.

13 You may not attach any significance to the fact that
14 the defendant did not testify. No adverse inference against
15 the defendant may be drawn by you because he did not take the
16 witness stand and you may not consider the fact that the
17 defendant did not take the stand at all in your deliberations
18 in the jury room.

19 Law enforcement witnesses: You have heard the
20 testimony of law enforcement witnesses. The fact that a
21 witness may be employed as a law enforcement official or
22 employee does not mean that his or her testimony is deserving
23 of more or less consideration, or greater or lesser weight,
24 than that of an ordinary witness.

25 In this context, defense counsel are allowed to try to

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1 attack the credibility of such a witness on the ground that his
2 or her testimony may be colored by a personal or professional
3 interest in the outcome of the case.

4 It's for you to decide, after reviewing all of the
5 evidence or lack of evidence, whether to accept the testimony
6 of law enforcement witnesses, as it is with every other type of
7 witnesses, and to give that testimony the weight you find it
8 deserves.

9 Expert witnesses: You've heard testimony from what we
10 call expert witnesses. Expert witnesses are witnesses who, by
11 education or experience, have acquired learning in a science or
12 a specialized area of knowledge. Such witnesses are permitted
13 to give their opinions as to relevant matters in which they
14 profess to be experts and give their reasons for their
15 opinions. Expert testimony is presented to you on the theory
16 that someone who is experienced in the field can assist you in
17 understanding the evidence or in reaching an independent
18 decision on the facts.

19 Your role in judging credibility applies to experts as
20 well as other witnesses. You should consider the expert
21 opinions that were received in evidence in the case and give
22 them as much or as little weight as you think they deserve. If
23 you should decide that the opinion of an expert was not based
24 on sufficient education, experience, or data, or if you should
25 conclude that the trustworthiness or credibility of an expert

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1 is questionable for any reason, or if the opinion of the expert
2 was outweighed, in your judgment, by other evidence in the
3 case, then you might disregard the opinion of the expert
4 entirely or in part.

5 On the other hand, if you find the opinion of an
6 expert is based on sufficient data, education, and experience,
7 and the other evidence does not give you reason to doubt his or
8 her conclusions, you would be justified in placing reliance on
9 the expert's testimony, but the extent of such reliance is your
10 choice.

11 You have heard the testimony of a witness who has
12 testified under a grant of immunity from this court. What that
13 means is that the testimony of the witness may not be used
14 against him in any criminal case, except a prosecution for
15 perjury, giving a false statement, or otherwise failing to
16 comply with an immunity order of this court.

17 You are instructed that the government is entitled to
18 call, as a witness, a person who has been granted immunity and
19 that you may convict a defendant on the basis of such a
20 witness' testimony alone, if you find the testimony proves the
21 defendant guilty beyond a reasonable doubt.

22 However, the testimony of a witness who has been
23 granted immunity should be examined by you with greater care
24 than the testimony of an ordinary witness. You should
25 scrutinize it closely to determine whether or not it is colored

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1 in such a way as to place guilt upon the defendant in order to
2 further the witness' own interests; for, such a witness,
3 confronted with the realization that he can win his own freedom
4 by helping to convict another, has a motive to falsify his
5 testimony.

6 Such testimony should be scrutinized by you with great
7 care and you should act upon it with caution. If you believe
8 it to be true, and determine to accept the testimony, you may
9 give it such weight, if any, as you believe it deserves.

10 Use of evidence obtained pursuant to search: You have
11 heard testimony about evidence seized during searches.
12 Evidence obtained from the searches was properly admitted in
13 this case and may be properly considered by you.

14 Whether you approve or disapprove of how it was
15 obtained should not enter into your deliberations because I now
16 instruct you that the government's use of this evidence is
17 lawful.

18 Charts and tables: Some of the exhibits admitted into
19 evidence were charts. These charts were introduced basically
20 as summaries. They are summaries of the evidence and are not
21 direct evidence of proof. They are a visual representation of
22 information or data that is in evidence. They are intended to
23 be of assistance to you in your deliberations.

24 In presenting the evidence which you have heard, it
25 can be easier to use summary charts than to place all of the

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1 relevant documents in front of you. It is up to you to decide
2 whether those charts fairly and correctly present the
3 information in the testimony and the documents.

4 To the extent that the charts conform with what you
5 determine the underlying evidence to be, you may accept them.
6 But one way or the other, realize that the charts are not in
7 and of themselves direct evidence, and the weight you give
8 them, if any, is your choice.

9 There may be some documents or audio recordings in
10 evidence that are redacted. "Redacted" means that part of the
11 document or audio recording was taken out. You are to concern
12 yourself only with the part of the item that has been admitted
13 into evidence. You should not consider any possible reason why
14 other parts of it have been deleted.

15 Certain recordings have been admitted into evidence.
16 Whether you approve or disapprove of the recordings of these
17 conversations may not enter your deliberations. These
18 recordings were made in a lawful manner and the government's
19 use of this evidence is lawful.

20 You must, therefore, regardless of any personal
21 opinions, give this evidence full consideration along with all
22 the other evidence in the case in determining whether the
23 government has proved the defendant's guilt beyond a reasonable
24 doubt.

25 The transcripts of the recordings were provided to you

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1 to assist you in listening to the recordings. However, it is
2 the tape recorded conversations, not the transcripts, that are
3 the evidence in this case.

4 One of the most important issues in this case is the
5 identification of the defendant as the perpetrator of the
6 crimes. The government has the burden of proof of proving
7 identity, beyond a reasonable doubt. It is not essential that
8 a witness be free from doubt as to the correctness of his or
9 her identification of the defendant. However, you, the jury,
10 must be satisfied beyond a reasonable doubt of the accuracy of
11 the identification of the defendant before you may convict him.
12 If you are not convinced beyond a reasonable doubt that the
13 defendant was the person who committed a particular crime, you
14 must find the defendant not guilty of that crime.

15 Identification testimony is an expression of belief on
16 the part of the witness. Its value depends on the opportunity
17 the witness had to observe the offender at the time of the
18 offense and later to make a reliable identification of the
19 offender.

20 You will hear arguments of counsel on the subject. I
21 will only suggest to you that you should consider the following
22 matters: Did a witness have the ability and adequate
23 opportunity to see the offender at the time of the offense?
24 Has a witness' identification of the defendant as the offender
25 been influenced in any way? Has his or her identification been

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1 unfairly suggested by events that occurred since the time of
2 the offense or by the circumstances under which the
3 identification was made? Is his or her recollection accurate?

4 In addition, you should consider the credibility of an
5 identification witness just as you would any other witness.

6 Let me repeat, the burden is on the prosecution to prove every
7 element of each crime charged, including the identity of the
8 defendant as the offender. Therefore, if, after examining all
9 of the evidence, you find that a crime was committed, but you
10 have reasonable doubt about whether it was the defendant who
11 committed the crime, you must find him not guilty of that
12 crime.

13 Alternate jurors: There are two alternate jurors.
14 The alternate jurors will not join in deliberations unless a
15 member of the jury is discharged. The alternate jurors will be
16 taken to a separate room by Mr. Street where they'll remain
17 until a verdict is reached, unless called to replace a juror.
18 The alternate jurors are not to discuss the case with each
19 other or anyone else until and unless they're asked to replace
20 a juror who is discharged. If an alternate juror replaces a
21 member of the jury, I'll instruct the jury to begin its
22 deliberations over.

23 With these instructions in mind, it says you will now
24 here from the lawyers, actually, we will now take a lunch
25 break. But after the lunch break, you'll hear from the lawyers

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1 who will give their closing arguments.

2 I remind you that arguments by lawyers are not
3 evidence because the lawyers are not witnesses. However, what
4 they say to you in their closing arguments is intended to help
5 you understand the evidence and reach your verdict. So please
6 pay careful attention to the arguments.

7 We'll have our lunch break, we'll come back, we'll
8 hear the closing arguments. Then I'll give you the final
9 instructions, and then you'll retire to deliberate. Enjoy your
10 lunch. Let's see what time it is. It's 11:40. Let's come
11 back at 1:00 and we will begin the closing arguments then.

12 Please don't talk about the case. Please leave the
13 charge here in the courtroom on your chair. We'll see you at
14 1:00. Thank you.

15 (Jury excused)

16 (In open court; jury not present)

17 THE COURT: You may be seated.

18 I received from you all a long time ago a verdict
19 sheet, which was a joint verdict sheet. I plan to use that and
20 hand it to all members of the jury. We're adjourned.

21 MR. DRATEL: I reassert my objection. After the
22 charge, I have to reassert what we had gone through in the
23 redline and then this morning.

24 THE COURT: Thank you. The motion is denied.

25 Thank you. We'll break for lunch.

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1 MR. ARAVIND: Thank you.

2 (Pause)

3 THE COURT: I wanted to ask about length of summations
4 before our break so we all understand what the plan is when we
5 come back. Let me ask Mr. Dratel. How long are you planning
6 to sum up?

7 MR. DRATEL: I would like to keep it at 35 minutes.

8 THE COURT: Thirty-five?

9 MR. DRATEL: Yes. I think certainly less than 45. It
10 depends on what the government does.

11 THE COURT: Thirty-five to 45. Assuming if you had
12 the same amount of time as 45 minutes, is that sufficient?

13 MR. ARAVIND: I think I was timing it so far to be 45
14 to an hour, so I think about an hour is probably more.

15 THE COURT: Total time?

16 MR. ARAVIND: For the opening summation and then
17 Ms. Tekeei will do rebuttal, which will be shorter.

18 THE COURT: It sounds like we're talking about over an
19 hour.

20 MR. ARAVIND: I think the opening summation is looking
21 like about an hour. I think the rebuttal will probably be 20
22 minutes.

23 MS. TEKEEI: Yes.

24 MR. ARAVIND: Again, depending on how long Mr. Dratel
25 takes.

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1 THE COURT: Mr. Dratel.

2 MR. DRATEL: You know, it all depends on what --

3 THE COURT: On how long they speak.

4 MR. DRATEL: Right, but also just in terms of rebuttal
5 as a genuine rebuttal and not just a second summation --

6 THE COURT: Right. I think we should agree on a time
7 and that you should reserve some time for rebuttal; that way,
8 Mr. Dratel has the opportunity to use an equal amount of time
9 if he wants to. Can you?

10 MR. ARAVIND: Your Honor, we have been preparing this
11 summation for the last few days.

12 THE COURT: I understand, so you think it's an hour.

13 MR. ARAVIND: I think the opening summation is an
14 hour. We have to marshal a lot of evidence.

15 THE COURT: I understand.

16 MR. ARAVIND: Now given the Court's ruling today, I
17 have to pay particular attention to some of the circumstantial
18 evidence and the phone records that are in evidence, which take
19 a little bit more time to explain.

20 THE COURT: Okay.

21 MR. ARAVIND: That was my estimate when I did this at
22 3:00 o'clock in the morning last night. I'm not sure how that
23 would be now.

24 THE COURT: How it plays out. Okay. At least we have
25 a preview. We think it's an hour. You think it's 20 minutes.

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1 And the defense can sum up for an equal amount of time if you
2 want but at some point, it's not advocacy anymore. At some
3 point, you put your jurors to sleep and the jury is not well
4 served and your case is not well served, but I leave the
5 strategic decisions to all of you.

6 MR. DRATEL: I'm not intending just to fill up the
7 time because they used up more time. Obviously, what the
8 government does in its opening summation may affect whether
9 it's 35 or 40 or 45 minutes.

10 THE COURT: Sure. I won't ring a bell. I won't hold
11 up any signs. I'll let you proceed.

12 MR. ARAVIND: Thank you.

13 (Luncheon recess)

14 (Continued on next page)

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Summation - Mr. Aravind

AFTERNOON SESSION

1:05 p.m.

THE COURT: Welcome back, ladies and gentlemen. I gave you the instructions about closing statements before our lunch break, so I won't repeat that. We can start now, if you are ready, Mr. Aravind.

MR. ARAVIND: Thank you, your Honor.

Good afternoon. Get on the top of the bed. Look forward. Don't look back.

That's what that man shouted at Emma Torruella when he forced her onto the bed in her bedroom, her hands bound tightly with a scarf. That's what this man said when he kidnapped Ms. Torruella, grabbed her neck and forced her into a car to go pick up a bag full of money. That's what this man said during the course of kidnapping and robbing Ms. Torruella and David Barea. That's what this man said and did to make Ms. Torruella believe that she was going to die.

What Antione Chambers didn't count on when he ran out of 1403 Overing Street the morning of March 25, 2013 with \$20,000 was that he would end up here.

He didn't count on the fact that David Barea and Emma Torruella would come here and testify and tell you exactly about their nightmare that they experienced that night or that Ms. Torruella would remember part of the license plate of Chambers' girlfriend's car that they used to abduct her during

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Summation - Mr. Aravind

1 the robbery.

2 He didn't count on the fact that a friend from his
3 neighborhood would show an agent a cracked cell phone screen
4 with Twizzie's name and contact information.

5 He didn't count on the fact that eventually the FBI
6 would get involved in this case and identify him as the user of
7 his phone or that an FBI agent would track his phone, showing
8 him going from the apartment that he shared with Zaporla Dunbar
9 directly to Tyrone Brown's apartment after Brown called him to
10 tip him off about a robbery at the exact time of the robbery.

11 It's simple. This defendant didn't count on getting
12 caught redhanded that day. But when the defendant eventually
13 realized that the NYPD and the FBI were looking for him, he
14 fled. And when he was caught, finally, the defendant was
15 caught in a rental car that wasn't in his own name with a whole
16 new identity.

17 Earlier this week we told you that we would prove to
18 you that Antione Chambers committed a brutal armed robbery and
19 kidnapping of David Barea and Emma Torruella last March and
20 that is exactly what the evidence has shown.

21 In this trial you heard testimony from 11 witnesses.

22 You heard from Ms. Torruella, who told you that she
23 was robbed by a man who grabbed her neck and forced her into a
24 car and pushed her on the floor just as she thought she was
25 going to die.

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Summation - Mr. Aravind

1 You heard from David Barea, who told you in clear
2 detail about what happened to him at Tyrone Brown's apartment
3 at 1338 Croes Avenue and then at Emma Torruella's apartment at
4 1403 Overing.

5 You heard from Demi Torres about what she unmistakably
6 saw that night, her mother in distress. You saw phone record
7 evidence showing that the defendant was in contact with Tyrone
8 Brown, another drug dealer who had purchased crack from Barea
9 and who set up the robbery just before the robbery happened.

10 You saw the video of Barea being attacked and robbed
11 by two men. You also saw the cell site location evidence which
12 showed you that the defendant traveled from his apartment in
13 the north Bronx to the robbery scene right before the robbery
14 and then traveled back to his apartment right after the robbery
15 and then went to Pennsylvania the next day.

16 And you saw that fake ID that the defendant was found
17 with when he was arrested in New Jersey.

18 This afternoon, ladies and gentlemen, I am going to go
19 through the evidence that you have heard and seen and that
20 establishes how the evidence proves that the defendant is
21 guilty.

22 While I go through the evidence I'm also going to
23 address some of the arguments that I expect the defense
24 attorney will make in his summation.

25 I want to be clear. The defendant has absolutely no

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Summation - Mr. Aravind

1 burden. It is the government's burden to prove the defendant's
2 guilt. It is a burden we embrace and which we have met here.
3 But when a defendant chooses to cross-examine witnesses and
4 make arguments, we can address those arguments in summation,
5 and I'll be doing that today.

6 I'm also going to talk very, very briefly about some
7 of the charges, but I am not going to spend much time on that
8 because you just heard the charge from Judge Schofield.

9 First, I want to talk about what's not in dispute.
10 There is no serious dispute that David Barea and Emma Torruella
11 were robbed and kidnapped at gunpoint on March 25 of last year.
12 Even in his opening, defense counsel conceded that there is no
13 dispute that there was a robbery and Emma Torruella and David
14 Barea were taken against their will to get money.

15 There is also no dispute that David Barea was a
16 serious drug dealer and one of his customers was Tyrone Brown,
17 another drug dealer. You heard the wiretap calls. There is no
18 dispute about that, ladies and gentlemen.

19 There is also no dispute that the defendant was in a
20 relationship with Zaporla Dunbar, that they had a child
21 together, and they previously lived at 4782 Barnes Avenue,
22 before they both left town suddenly once the FBI came knocking
23 on their door.

24 So what is in serious dispute? It's simple. The one
25 thing the defense has to dispute, the one thing that they

EA3MCHA4

Summation - Mr. Aravind

1 cannot admit, in spite of all the evidence to the contrary, is
2 obvious. They have to dispute that the defendant was one of
3 the robbers, the identity of the tall guy. But you know that
4 he was one of the robbers because of all of the evidence you
5 heard and saw in this case.

6 So what evidence am I talking about? During the
7 course of the summation I am going to focus on eight main forms
8 and types of evidence.

9 First, you heard the testimony of Ms. Torruella, the
10 woman who woke up to find the defendant at her doorstep in the
11 middle of a robbery and a kidnapping. Now, she made a prior
12 identification that it was the defendant who grabbed her neck
13 and took her to her mother's apartment so that she could get
14 that bag of cash under her mom's bed. I am going to spend some
15 time talking about Ms. Torruella's testimony.

16 And what happens when they go to Emma's mother's
17 house? You next had the testimony of Demi Torres.

18 Third, you have the testimony of David Barea. Barea
19 is a drug dealer, pure and simple. But he did not deserve to
20 be robbed and kidnapped at gunpoint, and his testimony of that
21 evening was devastating and detailed, and it is completely
22 corroborated by the other evidence in this case.

23 Fourth, you have that surveillance video at Croes
24 Avenue which corroborates what David Barea told you.

25 Fifth, you have the testimony of law enforcement

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Summation - Mr. Aravind

1 officers. You heard from Detective Deloren, who responded to
2 the robbery. He found Barea with bruises. You also heard that
3 he found a hammer in Chambers' girlfriend's Honda Accord that
4 was used during the robbery. You heard from Special Agent John
5 Reynolds, who analyzed the cell phone evidence and was able to
6 determine who Antione Chambers was. The testimony of these law
7 enforcement agents corroborates what the victims told you.

8 Sixth, you had the unmistakable evidence from numerous
9 sources, the prison guard, the screen shot from Kentrell
10 Ferguson's phone, Tyrone Brown's phones, and the toll records
11 that the defendant Antione Chambers' nickname was Twizzie and
12 that the defendant used a phone to communicate with Brown
13 before and right after the robbery.

14 Seventh, you have the cell site location evidence that
15 shows where that phone associated with Twizzie was that
16 morning. You know, ladies and gentlemen, that that is the
17 defendant. The evidence showed you that right before the
18 robbery the defendant traveled from Barnes Avenue to Croes
19 Avenue, and then right after the robbery he traveled back to
20 his place on Barnes Avenue.

21 Eighth, you have the testimony of Officer DeRosa, who
22 stopped and eventually arrested the defendant. That testimony
23 shows that after he knew the FBI and the NYPD were out looking
24 for him, the defendant and his girlfriend left down. They were
25 eventually found in New Jersey with the defendant with a fake

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Summation - Mr. Aravind

1 driver's license in a rental car he didn't even rent.

2 Let's talk about the evidence. And this case starts
3 with David Barea. David Barea sold drugs, then he became a
4 confidential informant, and then he sold drugs again when he
5 wasn't supposed to. One of David Barea's customers was Tyrone
6 Brown. And Brown used to buy cocaine and crack cocaine from
7 Barea. Brown was also a drug dealer. In fact, he was caught
8 with this package of drugs when he was arrested as part of this
9 case. This is Government Exhibit 600.

10 And you know, on March 25, 2013, Barea went to Tyrone
11 Brown's apartment. Brown had purchased crack cocaine from
12 Barea a little while earlier. And as part of their usual
13 arrangement, Barea was coming over to pick up the money.

14 There is David Barea. And before David Barea met up
15 with Tyrone Brown, he contacted him, as he usually did. What
16 did Barea tell you?

17 "Q. Did you tell him you were going there?

18 "A. Yeah. I had spoken to him during the day.

19 "Q. How did you communicate with him?

20 "A. By phone or text."

21 What do the phone records show? Exactly that. Here
22 is the call. We talked about it. At 12:56, Barea sends a text
23 message to Tyrone Brown. Remember, it looks like 11:56. You
24 heard testimony from Special Agent Reynolds that that is a text
25 message. And the text message is kept in central time. That

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Summation - Mr. Aravind

1 call actually takes place at 12:56, after midnight, just
2 minutes before the robbery. We don't know the content of that
3 message, but you know from your common sense what it said. I'm
4 coming over.

5 What does Tyrone Brown do? One minute later, at
6 12:57, he calls that 6130 phone number. Who is that? That's
7 the defendant, Antione Chambers. And they have a 33-second
8 call. What does your common sense tell you happened during
9 that call? It's time. He is coming over. You and Dee should
10 come over and do this. This is the setup call, ladies and
11 gentlemen. This sets up the robbery. Brown is calling his
12 coconspirator, Antione Chambers, and tipping him off that David
13 Barea is about to show up.

14 What happens next? 1:02, five minutes later, Brown
15 gets a call, again, now from Chambers, and, again, you can use
16 your common sense to infer what this call is about. Is he here
17 yet? Three minutes later. Brown calls back. He's on his way.
18 He's almost here. And then David Barea shows up outside of
19 1338 Croes Avenue. Again, there is that screen shot. Brown
20 let's Barea enter the apartment to finish their drug business.
21 And shortly afterward Steven Glisson and Antione Chambers show
22 up just like clock work. There they are.

23 As Barea leaves the apartment, Chambers and Glisson
24 push through the door with guns. The defendant and Glisson
25 immediately began shouting at Barea demanding where the money

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Summation - Mr. Aravind

1 was. That's the video. Chambers is the first man. Dee,
2 Steven Glisson, is the second. How do you know that that's
3 Antione Chambers assaulting the victim? Because of all of the
4 other evidence in this case.

5 The rest of the story is taken over by David Barea.
6 Chambers hits Barea, you have seen it in the video, and Barea
7 fights back. Two things happened that are very significant.
8 The first is Barea's words. We were tussling for a couple of
9 seconds. We were fighting. I was slamming him on the wall.
10 He slammed me. And as we were still struggling, Dee came in
11 right after him and put the gun to my head and was like, stay
12 the fuck still, stay the fuck still. Glisson brandishes a gun
13 and points it to the defendant's head.

14 And what does the defendant say? Again, David Barea:
15 The tall guy kept beating me. He put my face to the wall and
16 told me not to look at him. He was just beating on me. He had
17 a hammer in his hand hitting me on my back, my shoulder blade,
18 my legs.

19 "Q. What, if anything, did he say to you?

20 "A. That not to look at him, don't look at my fucking face,
21 don't look at me, don't look at me."

22 You know, ladies and gentlemen, that this is the
23 hammer.

24 Now, that's what the defendant told David Barea, not
25 to look at him, because that was the most important thing that

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Summation - Mr. Aravind

1 concerned the defendant, not to be seen, not to be detected,
2 not to be identified.

3 And you heard that the robbers were very careful that
4 evening. They wore gloves, masks. They had part of their
5 faces covered. They used a gun with a potato on it so it would
6 muffle the sound in case there was violence, a homemade
7 silencer. They were cautious and they didn't take chances.

8 Remember this video? This is Steven Glisson and
9 Antione Chambers approaching David Barea's apartment. What
10 happens? The light goes on and look at their reaction. They
11 were afraid of being seen. They are afraid of the light. And
12 then they finally recover and they get ready to do the robbery.

13 These guys were professionals. They didn't leave a
14 trace in that apartment. You heard that the DNA on the duct
15 tape turned out to exclude Chambers, and there was enough DNA
16 on that hammer.

17 What happens next? With a gun pointed to his head,
18 Barea made a quick decision. He wanted to stall for time, so
19 he told Chambers and Glisson that there was money at the
20 apartment he shared with Emma Torruella. And so what did they
21 do? They took him that way. And then you see Tyrone Brown.
22 This is them leaving the apartment and there is David Barea
23 with his hands behind his back and the defendant. Chambers and
24 Glisson grab Barea. They bind his hands with duct tape. They
25 take him to Torruella's house so they can get the money that

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Summation - Mr. Aravind

1 they wanted. You heard they hit Barea with a hammer. They
2 pointed a gun at him. Meanwhile, Tyrone Brown, the setup man,
3 walked calmly to the door, locked it, and then walks out a few
4 minutes later. Do you remember that part of the video. Brown
5 is cool as a cucumber.

6 Before we continue to talk about that night, we need
7 to take a minute to talk about the relationship between Antione
8 Chambers and Tyrone Brown. They are friends. They are also
9 partners in crime. You can see that from the phone evidence
10 that is admitted as part of this case. Remember, this is the
11 chart that Special Agent Reynolds prepared. It shows all the
12 phone contact between Tyrone Brown and Twizzie, who you know is
13 Antione Chambers, calls on March 17, March 18, over and over
14 and over again, a week before the robbery. They talked to each
15 other all the time. And guess what? They talked to each other
16 on the phone, especially when David Barea is around. Here we
17 have the phones, the calls between Brown and Twizzie before the
18 robbery on the 17th and the 18th. What did David Barea tell
19 you about that? Barea said that about a week before the
20 robbery he sees Tyrone Brown in the area around his apartment.

21 Just like on the day of the robbery, a week before the
22 robbery takes place, Chambers is home on Barnes Avenue. He
23 starts talking to Brown, who has been in contact with Barea.
24 And Chambers heads down to Brown's apartment. That was
25 reflected in the cell site map that Special Agent Perry

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Summation - Mr. Aravind

1 prepared. Remember what Barea told you. He said that he and
2 Tyrone Brown called, exchanged calls the week before the
3 robbery, and they met up. And you saw the cell sites. The
4 defendant, Antione Chambers, also went to the vicinity of
5 Brown's apartment that day, the exact same thing he does a week
6 later, the day of the robbery, when David Barea calls Brown and
7 meets up with Brown.

8 You can infer what's happening here, ladies and
9 gentlemen. The defendant is casing out his target. He was a
10 professional. He wanted to make sure that it went off without
11 a hitch. And he enlisted Tyrone Brown to help him.

12 You heard during the jury charge the members of a
13 conspiracy don't sit around a table planning crimes. Often we
14 have to use circumstantial evidence to figure out what
15 criminals are doing. And the pattern of calls between Tyrone
16 Brown and Antione Chambers on March 17 and 18 and then the
17 calls right before the robbery show that conspiracy forming,
18 and eventually Tyrone Brown tips off his friend, the defendant,
19 about the robbery.

20 Let's go back now to the day of the robbery and let's
21 fast forward until we get to 1403 Overing. Once the defendant
22 and Glisson and the light-skinned or light-eyed robber, as Emma
23 Torruella called him, kidnapped Barea, they take him to Emma
24 Torruella's apartment and Barea and Torruella told you what
25 happened next. They told you what happened inside their own

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Summation - Mr. Aravind

1 apartment, their home, two strange men wearing masks, gloves,
2 going through their things and demanding money.

3 Torruella told you that they then went to a third
4 apartment, her mom's apartment, where she took out a bag that
5 she stashed there, a bag containing \$20,000 which contained her
6 boyfriend or her common law husband's dirty drug money. The
7 other witness who told you about that was Demi Torres, who was
8 present when the defendant came to her door to pick up that bag
9 of money.

10 Now you know what happens next. The testimony of
11 Barea, Torruella, and Torres is not disputed when it comes to
12 the brutality and the violence that the robbers committed.
13 What is disputed is the identity of the tall guy. We know the
14 identity of the tall guy from all of the objective evidence in
15 this case and what the witnesses told you that led law
16 enforcement to find and apprehend the defendant.

17 Let's start with Emma Torruella. You heard that Emma
18 Torruella got a good look at the defendant when he took off his
19 mask when he was in the Honda Accord. Let's talk for a second
20 about Emma Torruella. Let's talk about what happened during
21 her testimony.

22 What I submit happened to you and what you witnessed
23 was a witness who came into this courtroom that day ready to
24 confront the man who had grabbed her neck and kidnapped her.
25 She told you in detail what happened to her. She told you that

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Summation - Mr. Aravind

1 she thought she was going to die. And she was strong. She
2 identified the defendant in court and told her account of what
3 happened. But then you saw what happened to her.

4 Ladies and gentlemen, what you saw, I submit, was a
5 witness who had a breakdown before your very eyes. You saw a
6 woman who was confronted repeatedly with the face of her
7 attacker.

8 MR. DRATEL: Objection.

9 THE COURT: Overruled.

10 MR. ARAVIND: Staring up at her from the exhibits and
11 his face staring at her from the courtroom, and she fell apart.
12 She was asked to identify the defendant and then she just
13 couldn't do it anymore. That happened, ladies and gentlemen.
14 This is real life. And what happened to Emma Torruella was
15 real.

16 But this trial didn't end when Emma Torruella got off
17 the witness stand. Instead, you heard all of the evidence that
18 shows that Antione Chambers is guilty of the charges in this
19 case. Let's talk about that evidence right now. And let's
20 look at the phone calls during the robbery. You heard from
21 David Barea that the two robbers took his phone and used it.
22 Here is the testimony:

23 I asked him, you know, if he could please call the
24 tall guy because they were taking too long.

25 Yes.

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Summation - Mr. Aravind

1 And how did he do that? He used a phone that was on
2 top of the table. There was a table by the kitchen in the
3 hallway, my phone. That's David Barea's testimony.

4 What did Emma Torruella say? The exact same thing?
5 Let's look at the phone evidence first and then we will look at
6 Ms. Torruella's testimony.

7 This is the reports for one of David Barea's phones.
8 And what does it show you? Special Agent Reynolds told you
9 exactly what it did. That's that 8485 number which we know is
10 one of Groovy, David Barea's number, calling that 9462 number,
11 which you remember is the John 129 cell phone. It's one call
12 from one Barea number to another Barea number, exactly like
13 David Barea told you.

14 What is also the significance of that? It means that
15 the robbers are using Barea's cell phones that he took with him
16 to communicate with each other. And it's precisely why you
17 don't see any phone contact on Antione Chambers' Twizzie phone.
18 That's the 6130 phone that we looked so much at.

19 Remember that gap that Special Agent Reynolds told you
20 about? That's what that was. These guys were professionals.
21 They wanted to use their victim's phones to contact each other
22 because they didn't want to leave a trace. They didn't want to
23 have anything to link them to the scene of the crime. That's
24 why we don't have cell sites for the Twizzie phone at Overing
25 or Bruckner, because the defendant didn't use his cell phone

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Summation - Mr. Aravind

1 then. He was using Barea's phone.

2 And what happened when Emma and the defendant left to
3 go to Emma's mother's apartment on Bruckner? Emma Torruella
4 got a good look at that car, that Honda Accord, that same car
5 that was sitting outside of Zaporla Dunbar's apartment after
6 the robbery. That's the car.

7 This is a very important moment, ladies and gentlemen.
8 Emma Torruella told you on the witness stand that she
9 remembered the numbers 7788, and I bet it's four numbers that
10 she will never ever forget. At the time of the robbery she
11 remembered two letters, two. Who testified to that? Both
12 Special Agent Reynolds and Detective Deloren.

13 Think about that for a minute, ladies and gentlemen.
14 Emma Torruella is in the middle of her nightmare and she
15 remembers six out of the seven digits or numbers on the license
16 plate. She wants to remember because she doesn't want to
17 forget. She wants to know who did this to her. And she tells
18 the agents that and that's exactly what they do during the
19 investigation. They find the car that was used during the
20 robbery right outside the defendant's front door on Barnes
21 Avenue.

22 Now, I expect Mr. Dratel to argue that you should
23 discount Ms. Torruella's identification of that car. She said
24 Acura, not Honda. And when the agents found that Honda Accord,
25 and not that Acura, it must mean that the agents have the wrong

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Summation - Mr. Aravind

1 color and they got the wrong guy.

2 You can use your common sense, ladies and gentlemen,
3 to reject that argument. You can reject it because you know
4 all of the evidence that points to that car being used during
5 the robbery. Let's think about it. A dark-colored, four-door
6 sedan, Japanese make and model, mid 1990s, a license plate
7 ending in 7788 with two letters that Ms. Torruella remembered,
8 A and K. Is that really so far off from Zaporla Dunbar's car?
9 It is remarkable that she remembered that much information in
10 the first place.

11 So what if the agents or the victims got the state
12 wrong. They got the numbers right and that's what matters.
13 Emma Torruella told you that she said that the car had an A in
14 it. There should be no doubt in your mind that the car used
15 during the robbery was Zaporla Dunbar's car. And you know from
16 your common sense the defendant was driving that car that day.

17 The third stop during the day of the robbery is going
18 to Demi's grandmother's house. Demi Torres is on the phone
19 getting ready for bed. She was very matter of fact about what
20 she observed on the witness stand. My mom came to the house.
21 She had no keys. She didn't call. I was in my room. And she
22 was banging on the door. And someone was with her that was
23 unknown. I didn't know him.

24 You saw Demi Torres' demeanor on the stand. Did she
25 look like someone who was making up a story to you? You also

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Summation - Mr. Aravind

1 heard about the person in that room who kept the door open and
2 kept avoiding eye contact.

3 MR. DRATEL: Objection.

4 THE COURT: I'll allow it.

5 MR. ARAVIND: While Emma Torruella went into her
6 grandmother's bedroom and took a book bag full of \$20,000.

7 You heard from Barea and Torruella what happened back
8 at 1403 Overing, and there is no real dispute about those
9 facts.

10 You also heard about the aftermath of the robbery.
11 David Barea calls Tyrone Brown repeatedly, but can't get in
12 touch with him. Remember these calls? This is David Barea's
13 testimony saying he tried to call him repeatedly, and here are
14 all the phone call contacts between David Barea and Tyrone
15 Brown's phone, just as Special Agent Reynolds laid out for you.
16 He's upset. He has a suspicion that Brown has set him up. He
17 wants to confront him. He calls him and calls him and calls
18 him. And what does Brown do? He calls his buddy, Antione
19 Chambers, that 6130 number, on March 26 at 10:53 a.m. his
20 partner in crime.

21 Let's talk a little bit about the cell site evidence.
22 The cell side evidence corroborates the narrative of that
23 evening. It shows that the defendant was involved. That
24 evidence is devastating, ladies and gentlemen.

25 And just to be clear, there should be no question in

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Summation - Mr. Aravind

1 your mind that that 6130 number that was Twizzie's number on
2 Brown's iPhone was right at 1338 Croes Avenue right at the time
3 of the robbery, right around 1 am. You heard that from Special
4 Agent Eric Perry, the cell site guy. The phone was there.

5 What did he show you? Here is the map that he showed
6 you. There is 1338 Croes Avenue, where the A is. And you can
7 see six phone calls from 12:13 to 1:16 a.m., right as that
8 robbery is about to begin.

9 Then he showed you the movement of that cell phone.
10 The first call is at 120, cell tower 120 and then the phone
11 goes up to cell tower 90, which is near Zaporla Dunbar's
12 apartment on Barnes Avenue.

13 You also heard a lot of testimony about the
14 investigation in this case. You heard testimony, you saw
15 evidence related to that investigation by the NYPD and the FBI.
16 You heard that because the defendant and his robbery crew were
17 professionals. They didn't leave a trace at the scene. And so
18 you heard that the NYPD and the FBI had to piece together the
19 story of what happened that day from the victims and from
20 information that the victims provided. There are two critical
21 pieces of that puzzle, the Honda Accord and the phone evidence.

22 Let's take a minute to talk about those. You heard
23 that the agents found that Honda Accord right outside the
24 defendant's apartment on May 23, 2013. You heard that the
25 agents learn about 4782 Barnes Avenue through that 911 call

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Summation - Mr. Aravind

1 that was placed by another one of Antione Chambers' phone
2 numbers. You heard about Detective Deloren and Special Agent
3 Reynolds going to that location and Detective Deloren saying
4 that he nearly jumped out of his seat when he saw that car, a
5 dark-colored Honda Accord with a license plate that nearly
6 matched the license plate given by David Barea and Emma
7 Torruella.

8 They ran that plate, AKW-7788, and the plate came back
9 to Zaporla Dunbar. That is part of that Department of Motor
10 Vehicles stipulation. They conducted surveillance of the car
11 and saw Zaporla Dunbar in that car. They were able to
12 establish the relationship between the car and Dunbar.

13 The next step was finding out Dunbar and Antione
14 Chambers. And systematically, step by step, they were able to
15 do that. Special Agent Reynolds walked you through that
16 testimony yesterday. You heard about the birth certificate.
17 You heard about how they conducted surveillance and were able
18 to make the purchases.

19 You also heard about, four days later, that car
20 sustained major damage during a car accident. Officer Whelan
21 told you that he was following that car on White Plains Road
22 when it committed several traffic violations. He got a good
23 look at the person and then the car sped off, causing an
24 accident near the defendant's residence, four days after
25 Special Agent Reynolds and Detective Deloren first went out to

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Summation - Mr. Aravind

1 Barnes Avenue.

2 Here is a map of where Zaporla Dunbar's apartment is,
3 4782 Barnes Avenue, very close to where that accident took
4 place. You heard that the Honda Accord was involved in an
5 accident and the driver, a black male, fled the scene.

6 You also heard that when Detective Deloren went to
7 find the Honda in that impound lot, he found this hammer. And
8 that's Government Exhibit 500. That same hammer was shown to
9 David Barea, who identified it as the hammer that was used
10 repeatedly by the defendant to hit him on the legs when Barea
11 was not forthcoming enough to tell him where the money was.

12 Based on all of that evidence related to the car, is
13 there any doubt that the Honda Accord with the license plate
14 AKW-7788, used by the defendant, Antione Chambers, when he
15 drove Emma Torruella to Emma's mother's house to get that bag
16 of money. There should be no doubt in your mind once you make
17 all the connections and use your common sense.

18 What about that hammer. When the defendant was
19 arrested, he told Special Agent Reynolds that it was just one
20 of the tools when he worked on his houses. But Detective
21 Deloren told you he found no other tools in that regard when it
22 was found.

23 Before we begin, I expect defense counsel is going to
24 stand up and say that there was no way that 6130 number can be
25 connected with Antione Chambers. Why does he have to make that

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Summation - Mr. Aravind

1 argument? Because the objective phone evidence is so
2 devastating. And you know that argument isn't true, ladies and
3 gentlemen. Why? Because the evidence shows that the user of
4 that 6130 phone is Twizzie, and you know that Twizzie is
5 Antione Chambers.

6 Let's go through the evidence. Tyrone Brown's iPhone.
7 There is the Twizzie home number, 717-743-6130. That's the
8 Twizzie phone that we got the cell sites for. Who else told
9 you that Antione Chambers was Twizzie?

10 You heard from Kentrell Ferguson. Kentrell Ferguson
11 was an interesting witness. He didn't want to be here. But he
12 showed up in a suit and he didn't want to tell you about
13 Antione Chambers. But he did tell you about him anyway. He
14 said his nickname first was Twin and then admitted that the
15 nickname was Twizzie in his phone. That's that cracked cell
16 phone screen that we looked at. Twizzie, with four other
17 numbers associated with it.

18 How else do you know that Antione Chambers is Twizzie?
19 Because the investigation that the agents did after finding out
20 about the contacts between the Tyrone Brown phone and Twizzie's
21 phone right before the robbery. You heard from Special Agent
22 Reynolds. He looked through Brown's phone, found that contact,
23 saw that number and then made all the connections, the
24 subpoenas, the public records, like the birth certificate and
25 the DMV records. He was able to establish that Twizzie was the

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Summation - Mr. Aravind

1 man who lived at 4782 Barnes Avenue and was the father of
2 Dunbar's child; this man, Antione Chambers.

3 Now, you just heard from Judge Schofield that if you
4 find the defendant attempted to evade arrest by fleeing, you
5 may, but are not required to infer that the defendant believed
6 he was guilty for the crimes for which he is here today. I
7 submit that is exactly the inference that you should draw from
8 the evidence about the defendant's flight.

9 What happens after the robbery? The first thing that
10 happens after the robbery is the day afterwards, when the
11 defendant gets out of town. He gets a call from Tyrone Brown
12 and later that day he leaves the area, and that's what Special
13 Agent Perry's slide showed. March 26, the day after the
14 robbery, the phone travels from New York to the vicinity of
15 Lebanon, Pennsylvania.

16 What happens the day after Brown is arrested? Brown
17 is arrested on May 8, 2013. And by that time the defendant is
18 no longer in the New York area. What did Special Agent Perry
19 say? Do you see any records from April 4 to April 30
20 referencing a cell tower in New York? Answer: I do not.

21 In fact, ladies and gentlemen, you should take a look
22 at the cell site records that day. All of this evidence is
23 before you and you can take a look at it during your
24 deliberations. This is in evidence as Government Exhibit 160B,
25 which is the cell sites for the Twizzie 6130 phone.

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Summation - Mr. Aravind

1 What was the last day that was used to make an
2 outgoing call? The last day, if you look at the records, is
3 April 8, 2013, the same day that Tyrone Brown is arrested. Is
4 that a coincidence, ladies and gentlemen, or does that mean
5 that the police are circling and the defendant wants to get rid
6 of himself, any of his ties to his coconspirators? Your common
7 sense tells you, this is the defendant who told David Barea not
8 to look at him during the robbery. This is the defendant who
9 didn't want to show his face to Demi Torres. This is the
10 defendant who wanted to eliminate his connection to Tyrone
11 Brown, so he dropped his phone.

12 And what happens when the agents start focusing on
13 Chambers? Let's go through the events on May 23. They go see
14 Zaporla Dunbar, see that Accord. They look for the defendant.
15 They can't find him. A week later they go look and try again.
16 They speak to more people. And no one knows where the
17 defendant is. Why? Because the defendant has gone
18 underground. And what do Zaporla Dunbar's records reflect?
19 Isaac Nelson: When she left, did you try and contact her?
20 Yes, I did. Were you successful? No. I called her and then
21 she didn't answer her phone. It wasn't working.

22 What did Special Agent Perry tell you about Zaporla
23 Dunbar's records? As reflected in this exhibit, that there are
24 no more outgoing calls after that day. Like the defendant, she
25 drops her phone.

1 Isaac Nelson doesn't have any skin in this game,
2 ladies and gentlemen. He's just a normal guy who came here and
3 testified and told you exactly what happened. And then you
4 finally heard from Sergeant DeRosa, who stopped the defendant
5 while he was driving a rental car not in his own name, and he
6 was found with a fake driver's license. This is the license
7 and the name Jerome Adams and that, ladies and gentlemen, is
8 the defendant.

9 Take a look at that picture, ladies and gentlemen.
10 Defense counsel has never challenged that this is a picture of
11 Antione Chambers, the defendant. You should look at all of the
12 photographs that are in evidence. And I submit to you that the
13 only inference that can be drawn from this fact that the
14 defendant was found in a different state with a fake ID in a
15 car that was not his own and that he repeatedly refused to give
16 his name to Sergeant DeRosa. What's the inference? He is
17 trying to hide his tracks. He knows the cops are after him and
18 he doesn't want to get caught.

19 Before I sit down, ladies and gentlemen, I want to
20 talk briefly about the charges. You have just heard them now,
21 so I am not going to belabor them. You have Count One, which
22 is the robbery conspiracy count. And there is no question
23 there was a robbery conspiracy here to rob Mr. Barea of his
24 money from the drug business. You heard repeatedly there are
25 two robbers working together to rob them this morning. You

EA3MCHA4

Summation - Mr. Aravind

1 also know that interstate commerce element that the judge just
2 told you was effective. Judge Schofield just instructed you,
3 the government only needs to show you a minimal or subtle or
4 potential effect. Did we show that to you here? Absolutely.
5 You heard from Mr. Barea the defendant stole money that he had
6 saved up in part from his drug business, his cocaine dealing
7 business. And you saw a stipulation that said that cocaine is
8 not manufactured in New York State. That's interstate commerce
9 right there.

10 Count Two is the robbery.

11 Count Three is the kidnapping. And on this point I
12 just want to talk about the fact, the undisputed fact that the
13 interstate commerce, the means, facility, or instrumentality of
14 interstate or foreign commerce, which is a big way of saying,
15 was a phone used during the kidnapping. Ladies and gentlemen,
16 you know that a phone was used during the kidnapping. We have
17 shown it to you repeatedly.

18 Count Four charges the defendant with possessing,
19 using, or carrying a firearm that was brandished during the
20 March 25, 2013 robbery. Was the gun brandished and used during
21 the robbery? Of course it was. You heard from Mr. Barea and
22 Ms. Torruella about how the defendant held a gun -- how a gun
23 with a potato was pointed during the robbery. You also heard
24 from David Barea that Antione Chambers had another gun that he
25 kept on his waist.

1 One of the things that I have tried to stress this
2 afternoon is how all of the evidence supports each other and
3 how it all points in one direction, there, to the defendant,
4 Antione Chambers. The testimony of the witnesses, the physical
5 evidence, the photographs, they all tell you the same thing.
6 Antione Chambers committed a vicious, brutal armed robbery and
7 kidnapping on March 23, 2013. You heard the violence and the
8 force that this defendant committed against Mr. Barea and
9 Ms. Torruella. That evidence, combined with the objective
10 evidence, the phone records, the cell site records, the
11 evidence about the car, the fake driver's license, all of that
12 other evidence supports the testimony and tells you that
13 Antione Chambers is guilty. The setup call from Brown to
14 initiate the robbery. The cell site location evidence that
15 shows that he was there. The fact that he drops his phone and
16 skips town once he knows the feds are on him.

17 I am going to sit down now. And after Mr. Dratel
18 speaks we will have an opportunity to speak to you again. I
19 submit to you that when you consider the testimony and all of
20 the evidence you have heard and seen, the only just and fair
21 view, the only view that makes sense here and is supported by
22 the evidence is that the defendant is guilty. Thank you.

23 THE COURT: Mr. Dratel.

24 MR. DRATEL: Thank you.

25 It's not him. Wow. Powerful, dramatic, genuine,

EA3MCHA4

Summation - Mr. Dratel

1 honest. It's not him. She said it twice. Not during
2 cross-examination. Not under pressure of cross-examination.
3 When the Assistant United States Attorney was questioning her.
4 Breakdown. She couldn't do the wrong thing.

5 I don't even know if I even have to say anymore. I
6 don't think I should have to say anymore than what you saw on
7 that witness stand from Ms. Torruella. But I am going to
8 because I couldn't leave a stone unturned here. That's more
9 than enough reasonable doubt. That is the definition of
10 reasonable doubt, the person with the longest, with the best,
11 with the closest look, without a mask, at the second robber got
12 on the witness stand and said, it's not him. Teardrop tattoo.
13 It's not him. She said the features were different. She
14 explained it. That's the only ID witness that's in this case.
15 It's not him.

16 Page 215 of the transcript. She was traumatized by
17 that robbery, no question. She suffered at the hands of those
18 robbers. Imagine the anger. You could see it. You could see
19 the impact that it had on her. You can see it in Mr. Barea as
20 well. She want here to exonerate Mr. Chambers. She was here
21 to put that robber away for as long as possible, but she
22 couldn't do the wrong thing. And she exonerated Mr. Chambers.
23 There is only one reason. It's not him. No amount of cell
24 phone records that have no content whatsoever. The only person
25 in this case who has testified about any phone conversations is

EA3MCHA4

Summation - Mr. Dratel

1 the Assistant United States Attorney during the past 45
2 minutes. You can scour the entire record. That's not
3 testimony. That's not evidence. It's not him. That's
4 evidence. None of it can overcome that.

5 I want to thank you for paying attention. I want to
6 thank you for being here. This is my last opportunity to speak
7 to you, so I feel I have to take advantage of it and go through
8 the evidence as a whole as well.

9 Now, there is no identification of Mr. Chambers as the
10 second robber in this case. In the opening I told you you are
11 going to see identifications. There is no identification of
12 Mr. Chambers as the robber in this case. I told you they were
13 tainted. Now they don't exist at all.

14 Eleven witnesses. Not a single one. By the way, not
15 a single one had any connection of Mr. Chambers to the robbery.
16 Not a single one even knows Mr. Chambers except for Kentrell
17 Ferguson, who says his nickname is Twin. He was their witness.

18 There is a lot more reasonable doubt. I'm not asking
19 you for inferences, to pile on speculation upon speculation,
20 making up conversations that you don't know what was in them,
21 making up, connecting someone to something without any
22 evidence. In my head, no. Dispositive reasonable doubt from
23 the witness stand.

24 Start with David Barea, detail, devastating detail.
25 It is. For Mr. Chambers' benefit. Teardrop tattoo on the

EA3MCHA4

Summation - Mr. Dratel

1 second robber, just like Ms. Torruella told you. He spent a
2 lot of time on Mr. Barea's testimony. Left that out.

3 Mr. Barea said the second robber was a little taller
4 than Mr. Barea, who is five-six, not seven inches taller.

5 The car. From both Ms. Torruella and Mr. Barea,
6 independently and separately. Remember she said they didn't
7 talk about it. They were instructed not to talk about it.
8 Both of them said an Acura. Both of them said black or dark
9 green, New York plate. They said a bunch of different colors:
10 Black, dark green, dark black, flat black; never blue. And Mr.
11 Barea knows colors on cars because we heard, when he talked
12 about seeing Tyrone Brown in a midnight blue Impala. He knows
13 the difference. Make, model, color, year, plates, all
14 different than that Honda that caused Detective Deloren to jump
15 out of his seat. We will talk about that some more in a little
16 bit.

17 Detective Deloren, you heard him testify that he even
18 wrote a memo and sent it out to people with a picture of an
19 Acura, a '97, '98 Acura describing it with details, partial New
20 York plate, '97, '98 year. Do we have any evidence that they
21 even checked New York plates to see if there was a similar car?
22 Agent Reynolds said, they are not always right about cars. How
23 about numbers? Maybe they are a number off. Maybe. Who
24 knows. Maybe she didn't see it as detailed as she thought she
25 might have. That didn't occur to them to check New York plates

EA3MCHA4

Summation - Mr. Dratel

1 to see if there was a car, an Acura that possibly matched
2 something like that. No. They had it in their head.

3 You heard the Assistant United States Attorney say
4 they were careful, so careful that the second robber in the
5 car, sitting next to her in the passenger's seat -- by the way,
6 she is in the car, in the passenger's seat. No hoodie, no
7 nothing. She has got a chance to examine that care on the way
8 to her mother's house and on the way back. She didn't waffle
9 on the Acura part. And you heard from even Detective Deloren,
10 from his notes, Acura, not possible Acura.

11 But she said the tall guy wasn't worried about the
12 examining the license plate. You remember? It was the other
13 guy. They don't even know it was Mr. Chambers. Light skinned,
14 speaking Spanish. He is the one who was worried about
15 examining the license plate. The tall guy took his mask off
16 and says, I don't care. I'm from Brooklyn. That's what she
17 told you. How is that for careful.

18 The car. I got to say, imagine, you can be in one of
19 two situations. You can be the employee, the employer, you can
20 be both, you can be in the middle. Imagine if you were tasked
21 as the employee or you were the employer tasking the employee
22 and said, I have a request. Please find me a specific car, a
23 specific make and model from a specific year and a specific
24 color with New York plates. An Acura, '97, '98. I would like
25 it to be black or midnight green. I want it to have New York

EA3MCHA4

Summation - Mr. Dratel

1 plates. I want it to be '97, '98. I may have said that
2 already. And the employee comes back with a Honda Accord
3 that's blue with North Carolina plates from '95. How do you
4 think that employee review is going to go?

5 Just to prove it, they had all those photos they would
6 show you. They didn't even show them on the witness stand or
7 any time. They never showed that blue Honda to Ms. Torruella
8 or Mr. Barea. And you know why? Talk about the Honda.
9 Mr. Chambers, when he was taken back from New Jersey, told
10 Agent Reynolds in the car that Ms. Dunbar wouldn't let him
11 drive the Honda. And you know that's true.

12 How do you know that's true? Another piece of
13 evidence the government put in. The government put in.
14 Remember the 911 call, February 1, 2013, five or six weeks
15 before the robbery. Somebody named Antione calls an ambulance.
16 That's the same day, by the way, that him and Zaporla Dunbar's
17 child was born, February 1, 2013, February 2. She went into
18 labor and they called the ambulance. You think if he was
19 allowed to drive the car they are waiting for an ambulance?
20 No. They are in that Honda on the way to the hospital. You
21 all know that from your common sense.

22 As I said in opening, circumstantial evidence goes
23 both ways. That's all you've got and it's weak, doesn't
24 connect, and it doesn't matter because you heard the witnesses.
25 David Barea, he never identifies the second robber except for

EA3MCHA4

Summation - Mr. Dratel

1 the teardrop tattoo. Ms. Torruella has a teardrop tattoo on
2 that second robber, too. Didn't hear a word about that in the
3 government's summation. Maybe they will come back with
4 something. Who knows what they will come back with. I won't
5 be able to talk to you again about it. I will talk to you
6 about that process, too.

7 By the way, in that conversation on the way back from
8 New Jersey everything that Mr. Chambers told him was true, that
9 you can try to verify this. He knew Glisson. He didn't say I
10 don't know Glisson, I don't know Brown. He said he knew them.
11 He said he made the 911 call. He said he was the father of
12 Ms. Dunbar's child.

13 (Continued on next page)

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Ea3gcha5

Summation - Mr. Dratel

1 MR. DRATEL: Not true.

2 The Honda accident, there's no evidence it was
3 Mr. Chambers driving the car. You heard Mr. Whelan. He looked
4 in the car. He saw the driver. Deer in the headlights. Was
5 he asked to identify? No. Did he have any identification?
6 No. So it was 5'10". That's the only description: Black
7 male 5'10". Really? Really? This is what they want you to
8 pile on top of each other to get nowhere. It collapses. Every
9 time you put another piece on, it collapses.

10 I asked Detective Deloren about confirmation bias,
11 confirmation bias being the tendency to interpret --

12 MR. ARAVIND: Objection.

13 THE COURT: Sustained.

14 MR. DRATEL: This case is about trying over and over
15 again and pounding a square peg into a round hole in which it
16 does not fit.

17 Now, the hammer, you couldn't find a more generic
18 hammer. I could have bought that at a hardware store yesterday
19 and brought it in. It looked the same. No DNA. Did they
20 check it for fingerprints maybe? No. Nothing. You know why.
21 You saw Detective Deloren. You know why. You know what this
22 investigation was about. This was about him jumping out of his
23 seat making up his mind right there.

24 The assistant United States Attorney's summation said
25 you know it was used during the robbery. You know this is the

Ea3gcha5

Summation - Mr. Dratel

1 hammer. How? How? There is no evidence that that hammer has
2 anything to do with this robbery. The only
3 testimony -- there's no testimony. The only time it comes in
4 from him. Even Mr. Barea said it looks like the hammer. Of
5 course it looks like the hammer. It looks like every hammer.

6 By the way, he's shown him the hammer two months after
7 the robbery. The car, the Honda parked on the street on Barnes
8 Avenue, wide open. No intention to hide, do anything. By the
9 way, talk about this investigation: They knew that Zaporla
10 Dunbar lived in North Carolina. Did they follow up with her?
11 No. She didn't answer the landlord's calls. She owed him
12 money. She moved to North Carolina. Maybe that's the reason,
13 but I'm not going to ask you to speculate. I'm going to ask
14 you to demand evidence, demand proof. Don't let a lawyer put
15 in your head a theory that doesn't fit what you heard from the
16 witness stand.

17 The New Jersey arrest: It's an hour from New York.
18 He's with Ms. Dunbar and the kids. That's not much flight four
19 months after the event. The phoney license: No telling when
20 he had it. No telling if he ever had a license in any state,
21 what the status of his license was, or why he has a phoney
22 license. That's nothing. It's a series of hollow,
23 insupportable inferences piled on each other getting you
24 nowhere.

25 Also, as the judge instructed you, even if you think

Ea3gcha5

Summation - Mr. Dratel

1 that that's some kind of inference that you can draw, it alone
2 is not sufficient for proof beyond a reasonable doubt.

3 Phone records: No content. All those messages going
4 back and forth, it's from him. I don't recall anybody, there's
5 no paper, there's no person, there's no evidence, there's no
6 testimony. There's nothing. That's speculation. That's not
7 even proof, much less beyond a reasonable doubt. Pure
8 speculation.

9 Compare that speculation with the testimony
10 of Ms. Torruella, "It's not him;" with Mr. Barea, "teardrop
11 tattoo," go ahead and compare. It's easy.

12 Also the phone, there's no connection -- they don't
13 have any proof putting that phone in Mr. Chambers' hands during
14 this whole period. We don't know who has that the phone. We
15 don't know about those contacts. We don't know what they mean.
16 No one explained them. No one knows if the phone is shared,
17 borrowed. Nobody knows this. There's no proof. There's also
18 other phone calls during that period, texts right around the
19 time that Mr. Barea shows up. In fact, you'll see some of the
20 communications with Mr. Barea are followed -- were preceded by
21 a whole other number, which is a lot of calls. Who knows? You
22 can't just make it up and fit it in, pound that square peg into
23 that round hole. You can't do it.

24 The cell site: They wanted to make it like the 26th
25 was something important, that he left New York, right, this

Ea3gcha5

Summation - Mr. Dratel

1 device left New York. Well, it shows that the device went back
2 and forth and back and forth and back and forth over the entire
3 period well before and well after.

4 Now, the most common tower used was Harrisburg,
5 Pennsylvania, and half the time, that device is in Pennsylvania
6 somewhere or in the corridor between New York and Pennsylvania
7 if you look at that arc. Did they put Mr. Chambers there at
8 any point during that period? Do you think they might have
9 investigated it? No, they made up their minds. Detective
10 Deloren jumped out of his seat and that was it. He liked that
11 car.

12 And then, by the way, after the 26th, it turns out the
13 device is back in the Bronx on the 27th, the 28th, the 29th.
14 There's no connection between the device leaving on the 26th
15 and the robbery. Those are not valid inferences. These are
16 what I would call digital diversions that we're capable of now
17 because everything is monitored and tracked and records of
18 everything. You can put together something that can show
19 anything with this kind of evidence. So much information.

20 What you really need is proof. You need something
21 from the witness stand that will tell you what happened in this
22 case, and you heard them. Would you want to be judged on the
23 standard of proof?

24 Remember the judge's reasonable doubt instruction:
25 Something important in your own life that would cause you to

Ea3gcha5

Summation - Mr. Dratel

hesitate. Is that what you would want to be judged on? Loved ones, would you want them to be judged on that standard, or on the standard of the victim of a robbery who comes in here and tells you it's not him.

The call from the Metropolitan Detention Center where there's something unintelligible and it says "My man Twiz." I don't know about you, but I'd never refer to myself by my name after I said "my man." That's usually referring to someone else. Think about that. Think about the syntax. Doesn't make sense, common sense. Your every day experience applies.

It says identify yourself, the prompt says identify yourself and then there's unintelligible and then it says "My man Twiz." Figure it out.

Certainly can't draw a conclusion from that. You just don't know. That's proof beyond a reasonable doubt. You could pile that a pile high. It's not proof beyond a reasonable doubt. By the way, there are 81 other calls during that time period. There are hundreds of emails during that time period. It's the only reference we see. That doesn't tell you anything.

You heard a lot of instructions about the law and just remember the government says that he was that second robber. It's not an aiding and abetting case. They say he's there. They say he's in it. They say he's the guy.

Detective Deloren, the stipulation, the Government

Ea3gcha5

Summation - Mr. Dratel

1 Exhibit 2007, tried to throw them under the bus: I told
2 everybody about that photo. No. Didn't. You heard that in
3 another case, he testified and the judge found for the
4 defendant despite his testimony at a hearing, not a trial.

5 Remember Ms. Torruella's testimony. She was shown
6 that second photo array and he told her forget about the
7 teardrop and then he denied it. Who do you believe? I think
8 it's an easy one. "Forget about the teardrop." What does that
9 tell you? Nobody's interested in this case. She never wavered
10 from the fact that the second robber had a teardrop tattoo.
11 David Barea said the same thing. And he said forget about the
12 teardrop. He liked that car, and he jumped out of his seat.
13 Game over.

14 He thought game over for Mr. Chambers when he got
15 Ms. Torruella to pick him out of an array, but she could not do
16 the wrong thing. He wasn't depending on that, and he wasn't
17 depending on you. He didn't know that you would hear that and
18 you would be here to do your duty.

19 DNA, none on the duct tape. Now, they said they were
20 wearing gloves, but we don't know when the duct tape was
21 bought, handled, we don't know any of that. And also there is
22 DNA on that duct tape. There are two DNA samples -- there are
23 two persons on that duct tape, DNA from two people. The only
24 one we know for sure it's not is Mr. Chambers.

25 They took samples from Ms. Torruella and Mr. Barea.

Ea3gcha5

Summation - Mr. Dratel

1 They took samples in March of 2013, the day of -- the day of
2 the robbery March 25. They never tested them. I think they
3 were worried about the answer that they would be on there, and
4 then we'd have two robbers. They didn't test Glisson. They
5 didn't test anybody. They didn't test Chambers 'til last week.
6 Think about it. Think about this case. Think about this
7 investigation. "I liked that car." That's what this
8 investigation was all about.

9 Think about when Mr. Chambers was arrested in New
10 Jersey. Did you hear about anything that was recovered from
11 him that is any way connected to this crime. When they
12 arrested Glisson, he had ammo. He had magazines for weapons,
13 not I don't mean reading magazines, I mean clips. Tyrone Brown
14 had drugs and a scale. By the way, I don't remember anybody
15 saying Tyrone Brown was a coconspirator. I don't remember any
16 testimony that said that Tyrone Brown was in on the robbery.
17 It's just from him. There's no witness who said that. So the
18 only reason those phone calls could make any sense is if that's
19 the case, but you don't have any evidence. Speculation; not
20 evidence. Nothing about Mr. Chambers, nothing recovered from
21 him that has anything to do with this robbery, no spending, no
22 money, no nothing.

23 As I said, this will be the last time I'll get a
24 chance to talk to you. I'm going to ask you that when
25 Ms. Tekeei gets up to do a rebuttal, which I will not be able

Ea3gcha5

Summation - Mr. Dratel

1 to respond to, that you take that responsibility and you say to
2 yourself, Ms. Tekeei, what about Ms. Torruella's testimony?
3 What about Mr. Barea's testimony? What about the complete lack
4 of any evidence to support your theory? What about Detective
5 Deloren? What about the car? What about the teardrop? What
6 about "It's not him"? What about the DNA? What about all
7 this?

8 That is reasonable doubt. There's enough reasonable
9 doubt, one for each of you. You only need one among you. I
10 said in the opening statement that I was confident that after
11 hearing the evidence, and the lack of evidence, that you would
12 find Mr. Chambers not guilty on all the charges. The trial has
13 only reinforced that conclusion. Your common sense reinforces
14 that conclusion.

15 You've had the privilege here of seeing something very
16 special. You could sit through a thousand trials and not see
17 what you saw here: The truth flowing out of someone
18 unstoppable, like her tears, inexorable, more powerful than
19 Detective Deloren's manipulation poisoning this investigation,
20 more powerful than any sterile evidence, without support.

21 She refused to do the wrong thing. It was moving. It
22 was courageous. It was authentic. It was really all you need
23 to decide this case, but there is so much more, but it's all
24 you need.

25 I can still hear her sobbing. I can still hear her

Ea3gcha5

Summation - Mr. Dratel

1 voice, the raw emotion, the raw honesty. I won't describe it
2 any more because I won't bother because I assume you can still
3 hear it yourselves. "It's not him."

4 Thank you.

5 THE COURT: Ms. Tekeei.

6 MS. TEKEEI: Thank you, your Honor.

7 First, I want to be very clear about something: Emma
8 Torruella testified the very first day of this trial. She sat
9 there in that witness stand and she looked around the courtroom
10 carefully and she told you unequivocally that the man sitting
11 at that table, Antione Chambers, the defendant, was the man who
12 kidnapped her on March 25, 2013. And then she sat there and
13 she told you, complete strangers, what had happened to her.

14 She told you how she saw the father of her son bloody,
15 hands tied behind his back, how the defendant beat him with a
16 hammer, how they threatened him with a gun. She told you how
17 the defendant grabbed her by the neck, how he forced her into a
18 car, how he told her she was pretty, how she thought she was
19 going to be raped, killed.

20 She told you how she was forced to take the defendant
21 into her mother's apartment, how she tried to persuade her
22 daughter that everything was fine, how her son, David's son,
23 was sleeping in that apartment, and she told you how the
24 defendant took the money, forced her back home, how he tied up
25 her hands and made her kneel to the floor, how he then made her

ea3gcha5

Rebuttal - Ms. Tekeei

1 lay faced down on her bed. She told you all of these things
2 and all the while, she glanced at that man.

3 We were here. She looked over at him, her kidnapper,
4 the man who had done all of these horrible things and she was
5 confronted with a picture of him on that witness stand. She
6 had him looking up at her from the table, and she had that
7 picture in front of her, and she had him staring at that
8 table --

9 MR. DRATEL: Objection.

10 THE COURT: Sustained.

11 MS. TEKEEI: And we all saw what happened: She fell
12 apart, she completely fell apart. And who wouldn't?

13 Ladies and gentlemen, we have all seen the defendant
14 throughout this trial and we looked at many pictures of him,
15 not just the pictures in the photo array, but also the very
16 picture that he provided on his fake ID. Look at the man
17 sitting here today. Look at the pictures of him. Emma
18 Torruella did.

19 First she said that is the man who kidnapped me that
20 night. She had picked him out, Antione Chambers, out of a
21 photo array nine weeks after he kidnapped her and robbed and
22 violently attacked her husband; and sitting here on Monday,
23 after she looked him in the eyes and told you the defendant was
24 her kidnapper, she fell apart. And with this photo array
25 picture that nobody disputes is the defendant in front of her

ea3gcha5

Rebuttal - Ms. Tekeei

1 she broke down and she compared them. We all saw that happen.
2 People's appearances change.

3 And you heard about that teardrop tattoo, the one
4 Steven Glisson had. How easy would it be to confuse the
5 teardrop, to think that both of your robbers --

6 MR. DRATEL: Objection.

7 THE COURT: Overruled.

8 MS. TEKEEI: How easy would it be for her to have
9 confused that and thought that the two people who committed
10 these violent acts both had a teardrop tattoo?

11 This afternoon you heard several arguments from
12 Mr. Dratel on behalf of his client. As you know, though, there
13 is a critical difference between argument and evidence. And
14 argument is only as good as the facts and the evidence on which
15 it is based; and what Mr. Dratel provided you was argument and
16 an invitation to speculate.

17 What we have presented to you, and what we think you
18 should be focused on when you go back and deliberate, is the
19 evidence, the facts and the reasonable inferences that you can
20 draw from the facts.

21 And why is this so important? Because much of what
22 you heard from the defense was designed to distract you from
23 the evidence and the facts that you should be considering.

24 Ladies and gentlemen, at the beginning of this trial,
25 I told you that this case was not going to be like a television

ea3gcha5

Rebuttal - Ms. Tekeei

1 show that you might watch, but I was wrong. There were some
2 dramatic moments, but that's also what happens in real life;
3 and that's how you know that when David and Emma took the stand
4 and told you what happened to them, they were being brave; and
5 that's how you know that the defendant was one of the men who
6 robbed and kidnapped them that night.

7 In his opening, and in his closing statements, defense
8 counsel tried to minimize Emma Torruella's identification of a
9 defendant from a photo array in which she circled his picture
10 and signed his name nine weeks after the robbery.

11 The compelling phone evidence in this case showing you
12 that the defendant Antione "Twizzie" Chambers was intricately
13 involved this the robbery and kidnapping that night. The
14 indisputable evidence regarding the car that the defendant and
15 his coconspirators used the night of the robbery, his
16 girlfriend's car, the one that was parked outside of their
17 apartment when the agents, who had no idea at that time who
18 Antione Chambers was or that he even existed, went to try to
19 interview the residents of 4782 Barnes Avenue.

20 When you consider carefully the evidence in this case,
21 you can see why the defense would try to distract you, because
22 if you focus on the facts and the evidence, all the details are
23 there, it's clear that the defendant is guilty. Antione
24 Chambers is Twizzie. Kentrell Ferguson told you that. He
25 tried not to, but he ultimately admitted that Antione Chambers,

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Rebuttal - Ms. Tekeei

1 the man sitting there, is Twizzie.

2 Tyrone Brown's first call after David Barea called him
3 the night of the robbery to tell him he was on his way over;
4 Twizzie, the owner of the phone that happens to be located at
5 the robbery location during the time of the robbery, during the
6 time of the kidnapping, and then after the robbery and
7 kidnapping are all over, he goes back to 4782 Barnes Avenue.
8 Indisputable.

9 MR. DRATEL: Objection.

10 THE COURT: Overruled.

11 MS. TEKEEI: The apartment where Antione Chambers
12 lived, and you heard that from the landlord Isaac Nelson who
13 has nothing to do with this case, you heard him tell you about
14 where Chambers lived.

15 Twizzie, Tyrone Brown's first call after Detective
16 Deloren, investigating the robbery, called Brown to interview
17 him; the number that after Brown's arrest on April 8, 2013
18 stops being used; and then Twizzie, the defendant, is stopped
19 in New Jersey with a fake driver's license and refuses to give
20 his real name.

21 Antione "Twizzie" Chambers must be the unluckiest man
22 in the world. His phone, his girlfriend's car, his fake
23 driver's license, his refusal to give his real name when he
24 knows the authorities are looking for him, ladies and
25 gentlemen, Antione "Twizzie" Chambers was one of the robbers

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Rebuttal - Ms. Tekeei

1 that night, and you know this because the indisputable evidence
2 tells you that.

3 Now, Mr. Dratel spent some time trying to tell you
4 that the NYPD was targeting the defendant. That is not true.
5 How do you know that? Because it was good old-fashioned police
6 work. Here's what you learned from Special Agent Reynolds and
7 Detective Deloren: After the robbery and kidnapping, they
8 responded to the location where the robbery started, Tyrone
9 Brown's apartment, 1338 Croes Avenue.

10 They found video surveillance that showed them exactly
11 what David Barea had told them happened: Two men covered from
12 head to toe to finger rushed him as he was leaving Brown's
13 apartment, attacked him, let him out with his hands tied behind
14 his back, shoved him into a car. And they got a description of
15 that car: A dark-colored sedan, possibly an Acura, four doors,
16 license sequence at least ending in 7788.

17 Now, ladies and gentlemen, we heard a lot about that
18 car today. Look back at the picture of that car in your
19 exhibits binder. Is it black? Is it midnight blue? How can
20 you tell? It is dark. It is dark, dark, dark, and that is
21 what the victims told the detectives that night.

22 They arrested Brown and what did they get? Two
23 phones. And when they looked at those phones, guess what they
24 found? Guess who Tyrone Brown, the tipster, called immediately
25 after talking to David Barea the night of the robbery?

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Rebuttal - Ms. Tekeei

1 Twizzie; the only number that Brown communicated with
2 extensively that night leading up to the robbery and
3 kidnapping.

4 And then what did the agents and the detectives do?
5 They began to research all of the phone numbers on those phones
6 for Twizzie and you saw them, there were three of them, and one
7 of them matched the same number Kentrell Ferguson had for
8 Twizzie for Antione Chambers.

9 MR. DRATEL: Objection.

10 THE COURT: Overruled.

11 MS. TEKEEI: Guess what they found. One of those
12 numbers had been used by a man who called himself Antione when
13 he called 9-1-1 and gave an address, 4782 Barnes Avenue. And
14 then they went to that address, old-fashioned police work, and
15 what did they find?

16 They found a car, the very car that had been used in
17 the robbery, six out of seven of the license plate sequence
18 numbers matched the numbers and sequence that the victims had
19 given.

20 Was it a Honda? Was it an Acura? New York plates?
21 North Carolina plates? It does not matter. Six out of the
22 seven license sequence matched.

23 So what happened next? They did surveillance. They
24 observed. They saw a woman Zaporla Dunbar driving that car.
25 They didn't know who she was. They didn't know anything about

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Rebuttal - Ms. Tekeei

1 her. But they learned her son's name and what did they do?
2 They subpoenaed records to find out who her son's father was.
3 Antione, Antione Chambers. And they kept investigating
4 Twizzie's phones. Mr. Aravind went through this extensively.

5 And what does the 6130 Twizzie phone do a week before
6 the robbery when David Barea shows up to Tyrone Brown's house,
7 and then the very night of the robbery minutes, before and
8 after David Barea is at Brown's apartment? It's there: 1338
9 Croes Avenue. Special Agent Eric Perry told you that. That is
10 not a coincidence, ladies and gentlemen.

11 Mr. Dratel spent some time trying to convince you that
12 there's no hard evidence tieing Mr. Chambers to the scene.
13 That's because this was a professional job. They were covered
14 from head to toe.

15 Why is there no DNA evidence tieing Mr. Chambers to
16 that duct tape? Because he was wearing gloves. You heard
17 David Barea tell you that. You heard Emma Torruella tell you
18 that.

19 Why did he tell Emma he was from Brooklyn? Because he
20 wanted to take his mask off, because he was trying to throw her
21 off. And it's true: He did take that mask off. He made that
22 mistake, and that's why we're here today, because he never
23 expected that someone would be able to describe him, to pick
24 him out of a photo array nine weeks after the incident, nine
25 weeks after being robbed and kidnapped.

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Rebuttal - Ms. Tekeei

1 Ladies and gentlemen, over the past week, because of
2 the careful attention you have paid to the evidence in this
3 case, the defendant has received a fair trial. He has had his
4 day in court.

5 Judge Schofield has instructed you on the law and when
6 we sit down, it will be time for you to go into the jury room
7 and do your duty, to decide this case without bias or fear or
8 prejudice or sympathy, but based solely on the facts and the
9 evidence.

10 We urge you again to do that: Focus on the evidence,
11 follow the judge's instructions, and, most of all, to use your
12 common sense. Use your common sense when you evaluate what you
13 saw and what you heard from the witnesses on the stand, when
14 you think about how difficult it is to come into this
15 courtroom, how difficult it was for her to talk about the
16 serious night of her life, to walk you through her nightmare,
17 the night she thought she was going to die.

18 If you do those things, there is only one verdict you
19 can return that is consistent with the evidence and reflects
20 the truth of what the defendant did, that the defendant is
21 guilty.

22 THE COURT: Ladies and gentlemen, that concludes the
23 lawyers' arguments. You have now heard all the evidence and
24 all the arguments.

25 I have just a couple minutes of final instructions to

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1 give you and then you can adjourn to the jury room and begin
2 your deliberations.

3 You're about to go into the jury room and begin doing
4 that, and you are to conduct your duty as jurors in an
5 atmosphere of complete fairness and impartiality, without bias
6 for or against the government or the defendant.

7 I don't think you really need to follow along on this,
8 but you can if you want.

9 You're not to consider what the reaction of the
10 parties or the public to your verdict will be, whether it will
11 please or displease anyone, be popular or unpopular, or,
12 indeed, any consideration outside the case as it has been
13 presented to you in the courtroom.

14 You should find the facts from what you consider to be
15 believable evidence and apply the law as I gave it to you.
16 Your verdict will be determined by the conclusion you reach, no
17 matter whom the verdict helps or hurts.

18 For the same reason, the personality and conduct of
19 any attorney is not in any way at issue. If you formed
20 opinions of any kind as to those matters, they should not enter
21 into your deliberations.

22 The first thing you should do when you enter the jury
23 room is you should elect one member of the jury as your
24 foreperson. The person will preside over the deliberations and
25 speak for you here in open court.

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1 The foreperson has no greater voice or authority than
2 any other juror. The foreperson will send out notes and when
3 the jury has reached a verdict, he or she will notify
4 Mr. Street that the jury has reached a verdict.

5 You each have a copy of most of the exhibits that have
6 been admitted into evidence. The only exhibits that are
7 missing are voluminous exhibits.

8 You also have your notebooks, your own notes, you have
9 my jury instructions. You should feel free to refer to any of
10 those during your deliberations.

11 If you want any of the testimony read back to you, you
12 may request that. Please remember that when you request
13 testimony, the lawyers must agree on what portions may be
14 called for; and if they disagree, I must rule on and resolve
15 those disagreements. That can be a time-consuming process, so
16 please try to be as specific as you possibly can in requesting
17 any portion of testimony.

18 Your requests for testimony, in fact, any
19 communication with the Court should be made to me in writing
20 signed by the foreperson and then given to Mr. Street in an
21 envelope. In any event, do not tell me or anyone how the jury
22 stands on any issue until a verdict is reached.

23 The most important part of the case is the part that
24 you, as jurors, are now about to play as you deliberate on the
25 issues of fact. It is for you, and you alone, to decide

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Trial

1 whether the government has sustained its burden of proof as I
2 have explained it to you with respect to each charge against
3 the defendant.

4 If you find the government has met its burden of proof
5 on a particular charge, you must find the defendant guilty on
6 that charge.

7 If you find the government has failed to meet its
8 burden on any element of a charge, you must find the defendant
9 not guilty of that charge.

10 I know you will try the issues that have been
11 presented to you according to the oath that you have given as
12 jurors. In that oath, you promised you would well and truly
13 try the issues joined in this case and render a true verdict.

14 It is your duty as jurors to consult with each other
15 and to deliberate with a view to reaching agreement. Each of
16 you must decide the case for yourself, but you should do so
17 only after consideration of the case with your fellow jurors.
18 Moreover, you should not hesitate to change an opinion when
19 convinced that it is wrong.

20 Every juror should be heard. No one juror should hold
21 center stage in the jury room. No one juror should control or
22 monopolize the deliberations.

23 Your verdict must be unanimous, but you are not bound
24 to surrender your honest convictions concerning the effect or
25 weight of the evidence for the mere purpose of returning a

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1 verdict or solely because of the opinion of other jurors.

2 Discuss and weigh your respective opinions
3 dispassionately, without regard to sympathy, without regard to
4 prejudice or favor of either party, and adopt the conclusion
5 that in your good conscious appears to be in accordance with
6 the truth.

7 Again, each of you must make your own decision about
8 the proper outcome of the case based on your consideration of
9 the evidence and your discussion with fellow jurors. No juror
10 should surrender his or her conscientious beliefs solely for
11 the purpose of returning a unanimous verdict.

12 We have a verdict form for you. Mr. Street, maybe you
13 can pass it out while I finish.

14 The purpose of the form is to help us - the Court, the
15 attorneys, the defendant - to understand what your findings
16 are. No inference is to be drawn from the way the questions
17 are worded as to what the answers should be, and the questions
18 are not to be taken as any indication that I have any opinion
19 how they should be answered. I have no opinion and even if I
20 did, it would not be binding on you.

21 You should answer every question unless you are
22 directed to skip certain questions. You should also proceed to
23 the questions in the order in which they're listed.

24 After you have reached a verdict, the foreperson
25 should fill in the verdict sheet, sign and date it, and then

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1 give a note to the deputy stating that you've reached a
2 verdict.

3 Do not specify what the verdict is in your notes.
4 Again, just so it's clear, there should be one verdict sheet
5 filled out at the end of your deliberations.

6 When you have reached a verdict, you should tell
7 Mr. Street in a written note from the foreperson and do not say
8 what the verdict is, and then you can bring it with you into
9 the courtroom.

10 I'll stress that each of you must be in agreement with
11 the verdict that is announced in court. Once your verdict is
12 announced by the foreperson in open court and officially
13 recorded, it cannot ordinarily be revoked; and I will ask you
14 one by one if that is your verdict.

15 I remind you that you took an oath to render judgment
16 impartially and fairly without prejudice or sympathy and
17 without fear solely upon the evidence in the case and the
18 applicable law. Your oath sums up your duty. I know you will
19 do your duty and reach a just and true verdict.

20 Finally, I say this not because I think it's
21 necessary, but because it's a custom in this courthouse: You
22 should treat each other with courtesy and respect during your
23 deliberations.

24 All litigants stand equal in this room. All litigants
25 stand equal before the bar of justice. Your duty is to decide

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1 between those parties fairly and impartially to see that
2 justice is done, all in accordance with your oath as jurors.

3 Mr. Street.

4 (Marshal sworn)

5 THE DEPUTY CLERK: Jurors, you're in the hands of the
6 marshal.

7 (At 2:44 p.m., the jury retired to deliberate)

8 THE DEPUTY CLERK: Juror numbers 13 and 14, you're
9 going to come with me.

10 (Alternate jurors excused)

11 THE COURT: Counsel, if you decide to leave the
12 courtroom, please don't go far, and please be sure that
13 Mr. Street or whoever of my staff is here has to a way to reach
14 you, okay?

15 MR. DRATEL: Thank you.

16 MR. ARAVIND: Thank you.

17 (Recess pending verdict)

18 (In open court; jurors not present; defendant not
19 present)

20 MR. DRATEL: What's the Court's practice with respect
21 to -- do you want us all assembled at 9:45 are or do they just
22 come in and start deliberating. I'll be here. I wanted to
23 know what the Court likes to do.

24 THE COURT: I typically have everybody come, but if
25 you have a strong preference not to do that --

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1 MR. DRATEL: I'll be here at 9:45.

2 THE COURT: Does government have any preference?

3 MR. ARAVIND: We'll do whatever the Court wants.

4 THE COURT: Why don't we all gather because if they're
5 being diligent, it's nice to show them that we're here and
6 attentive and waiting for them.

7 MR. DRATEL: Obviously, the defendant will be produced
8 at 9:45 as well. Yes.

9 THE COURT: Hopefully, that will happen. They're
10 getting Mr. Chambers.

11 THE DEPUTY CLERK: Yes. He's on the way up. I closed
12 the door.

13 THE COURT: What I think I'll do is, ask them to come
14 at 9:30 and as soon as they're all here, then we'll convene.

15 Did all exhibits go back to the jury room with them,
16 the hammer and the duct tape?

17 MR. DRATEL: I don't think the duct tape.

18 MR. ARAVIND: Not the hammer or the drugs or the duct
19 tape.

20 THE COURT: Just documents.

21 MR. ARAVIND: Right.

22 THE COURT: Okay. Just curious. Thanks.

23 (Pause)

24 (In open court; all parties present)

25 (Jury present; time noted: 4:38 p.m.)

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1 THE COURT: Ladies and gentlemen, it's the end of the
2 week and the end of the first day of your deliberations and
3 we're going to break for the day. We will reconvene on Monday
4 at our usual time. Be here at 9:30. We'll come out at 9:45,
5 but if you're all here earlier, we will come out earlier. We
6 will basically keep the same hours.

7 If you're still deliberating at lunch time on Monday,
8 we'll bring your lunch in and you can have lunch here.

9 I just want to remind you, you'll be away for two days
10 with family and friends. Please remember, don't talk about the
11 case at all, especially now that you're in the midst of
12 deliberations, and don't look anything up.

13 I wish you a good weekend. Thank you. Just one
14 minute.

15 The other thing is that when you do come in, please
16 don't start your deliberations until I bring you all out here
17 and I know you're all here. Then I'll let you go back in the
18 room to deliberate. Okay. Thank you.

19 Have a good evening. The alternates can leave. See
20 you in the morning.

21 (Jurors excused)

22 (Alternate jurors excused)

23 (Adjourned to October 6, 2014 at 9:30 a.m.)

24 * * *